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THE
REVISED LAWS

OF
INDIANA,

IN WHICH ARE COMPRISED ALL SUCH ACTS OF A GENERAL
NATURE AS ARE IN FORCE IN SAID STATE;

ADOPTED AND ENACTED BY THE

GENERAL ASSEMBLY

AT THEIR FIFTEENTH SESSION.

TO WHICH ARE PREFIXED

*THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF
THE U. S., THE CONSTITUTION OF THE STATE OF INDIANA,*

AND

**SUNDRY OTHER DOCUMENTS, CONNECTED WITH THE POLITICAL HISTORY
OF THE TERRITORY AND STATE OF INDIANA.**

ARRANGED AND PUBLISHED BY
AUTHORITY OF THE GENERAL ASSEMBLY.

INDIANAPOLIS:

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DECLARATION OF INDEPENDENCE.

In Congress, July 4th, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED
STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station, to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes, which impel them to the separation.

Propriety of
the declaration.

We hold these truths to be self-evident—That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness: That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments, long established, should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves, by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Unalienable
rights of the
people, &c.

He has refused his assent to laws the most wholesome and necessary for the public good.

Recitation of
injuries.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it, at once, an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Petitions for redress unavailing.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity, which denoun-

Appeal to the British people fruitless, &c.

DECLARATION OF INDEPENDENCE.

ces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

Declaration.

The colonies absolved from their allegiance.

Mutual pledge of fidelity.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things, which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN HANCOCK.

NEW-HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE-ISLAND, &c.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW-YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW-JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.

Cesar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Car-
rollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.
Francis Lightfoot Lee,
Carter Braxton.

CONSTITUTION OF THE UNITED STATES.

NORTH-CAROLINA.

William Hooper,

Joseph Hewes,

John Penn.

SOUTH-CAROLINA.

Edward Rutledge.

Thomas Heyward, jr.

Thomas Lynch, jr.

Arthur Middleton.

GEORGIA.

Button Gwinnett,

Lyman Hall,

George Walton.

CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE 1.

SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Legislative powers vested in congress.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. House of Representatives, how composed.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. Qualifications of members.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of *New-Hampshire* shall be entitled to choose three: Representatives and direct taxes, how apportioned.
Enumeration every ten years.
Limitation of ratio.

First apportionment. *Massachusetts* eight; *Rhode-Island* and *Providence Plantations* one; *Connecticut* five; *New-York* six; *New-Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North-Carolina* five; *South Carolina* five; and *Georgia* three.

Writs of election. 4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Speaker. 5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

Senate, how composed. 1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

Divided into three classes. 2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Executives of states to make temporary appointments

Qualifications of members.

3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Vice-President presiding officer.

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

President pro tem. & other officers, how chosen.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

Sole power to try impeachments.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Extent of judgment in cases of impeachment.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Elections for senators and representatives, how regulated.

2. The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Congress shall assemble annually.

SECTION 5.

1. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house judge of the elections of its own members. Quorum.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.

Each house determine its own rules.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Journals.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation of members.

Privilege.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Members shall not hold offices, &c.

SECTION 7.

Revenue bills. 1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

President of
the U. S. his
veto.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered, and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays: and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned, by the president, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

Joint resolutions to receive the same sanction as bills.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The congress shall have power—

Congress have
power to lay
taxes.

1. To lay and collect taxes, duties, imposts, excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish a uniform mode of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

9. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years.

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress:

To provide for organizing the militia.

16. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings:—And

Exclusive legislation in the ten miles square, (District of Columbia.)

17. To make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department or officer thereof.

To make all laws necessary for carrying into execution the foregoing powers.

SECTION 9.

1. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight: but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Migration or importation of certain persons, &c.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Habeas corpus.

- Ex post facto law. 3. No bill of attainder, or ex post facto law, shall be passed.
- Direct tax according to census. 4. No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.
- No preference of ports. 5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.
- Money how to be expended. 6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
- No title of nobility granted. 7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

- Powers withdrawn from the states. 1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.
- Powers which the states may exercise with the consent of congress. 2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.

SECTION 1.

- Executive power vested in a President &c. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:
- Electors. 2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the

state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [Annulled—See amendments, article 12.]

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Congress may determine the time of choosing electors, &c.

5. No person, except a natural born citizen or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications of President.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president,* and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

In case of vacancy in the office of President, the Vice President to act, &c.

[*See sec. 9, chap. 109, vol. 2, U. S. laws.]

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.†

Compensation of the President \$25,000. [†See chap. 19 vol. 2, U. S. laws.]

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I DO SOLEMNLY SWEAR (or affirm) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES.

Oath.

SECTION 2.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

President, his powers. Commander in chief. May require the opinions of the heads of executive departments. Grant reprieves & pardons.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint

Make treaties. Appoint officers.

ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

May fill vacancies, &c.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

President, his duties.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

May convene congress.

Receive ambassadors.
Commission officers.

SECTION 4.

Impeachment

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE 3.

SECTION 1.

Judicial power vested in supreme court.

1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

Its extent.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens

of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.*

[*See restriction of this power, amendments art. 11]

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Jurisdiction.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Trials by jury

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Treason.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Its punishment.

ARTICLE 4.

SECTION 1.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

Acts of states accredited.

SECTION 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Citizens' privileges

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Fugitives from justice.

3. No person held to service or labour in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

Fugitives from labour.

SECTION 3.

New States
may be admit-
ted into the
Union.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Territory of
United States.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4.

Republican
form of gov-
ernment gua-
ranteed to the
states.

1. The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE 5.

Amendments,
how attained.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE 6.

Assumption of
debts.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Constitution,
treaties, &c.
supreme law
of the land.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Legislators
bound by oath
to support this
constitution.

ARTICLE 7.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Ratification,

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW-YORK.

Alexander Hamilton.

NEW-JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

DELAWARE.

George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH-CAROLINA.

William Blount,
Richard Dodds Spaight,
Hugh Williamson.

SOUTH-CAROLINA.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

Attest.

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE 1.

Congress prohibited from interfering with religion. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE 2.

Right to keep & bear arms. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier to be quartered, &c. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

No search except on probable cause, oath, &c. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

No person held to answer for a crime unless on presentment, &c. except in actual service in time of war. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE 6.

Speedy public trial by jury. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

ARTICLE 7.

In suits at common law, where the value in controversy

shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE 9.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

Restriction of
judicial power.

ARTICLE 12.

1. The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the vote shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states, shall be necessary to a choice. And

Mode of elect-
ing President
and Vice Pres-
ident.

if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death, or other constitutional disability, of the President.

2. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President: a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

ARTICLE 13.

Citizenship
forfeited, &c.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

ACT OF VIRGINIA.

An Act to authorize the Delegates of this State in Congress, to convey to the United States in Congress assembled, all the Right of this Commonwealth to the Territory North Westward of the river OHIO.

[PASSED DECEMBER 20, 1783.]

Preamble.

1. WHEREAS the Congress of the United States did, by their act of the sixth day of September, in the year one thousand seven hundred and eighty, recommend to the several states in the Union, having claims to waste and unappropriated lands in the Western Country, a liberal cession to the United States, of a portion of their respective claims for the common benefit of the Union:

2. And whereas this Commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty-one, yield to the Congress of the United States, for the benefit of the said States, all right, title, and claim, which the said Commonwealth had to the territory North-West of the river Ohio, subject to the conditions annexed to the said act of session:

3. And whereas the United States in Congress assembled, have, by their Act of the thirteenth of September last,

stipulated the terms on which they agree to accept the cession of this State, should the Legislature approve thereof, which terms, although they do not come fully up to the propositions of this Commonwealth, are conceived on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence that Congress will, in justice to this state for the liberal cession she hath made, earnestly press upon the other states claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the Union:

Be it enacted by the General Assembly, That it shall and may be lawful for the Delegates of this state to the congress of the United States, or such of them as shall be assembled in congress, and the said Delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this state, by proper deed or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in congress assembled, for the benefit of the said states, all right, title, and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country, within the limits of the Virginia charter, situate, lying, and being to the North-west of the river Ohio, subject to the terms and conditions contained in the before recited Act of Congress of the thirteenth day of September last, that is to say: Upon condition that the territory so ceded shall be laid out and formed into states, containing suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the states so formed, shall be distinct republican states, and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence, as the other states; that the necessary and reasonable expenses incurred by this state in subduing any British posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by Congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this state, which they shall judge to be comprised within the intent and meaning of the act of congress of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants and other settlers of the Kaskaskies, St. Vincents, and the neighbouring villages, who have professed themselves citi-

Delegates em-
powered to
convey.

Conditions.

Reservations.

zens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this state, shall be allowed and granted to the then Colonel, now General George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers that have been since incorporated into the said regiment, to be laid off in one tract, the length of which is not to exceed double the breadth, in such place on the north-west side of the Ohio as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion according to the laws of Virginia. That in case the quantity of good lands on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon Continental establishment, should, from the North-Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the north-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said states, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever. Provided, that the trust hereby reposed in the delegates of this state shall not be executed, unless three of them, at least, are present in congress.*

All the lands ceded to be a common fund for the members of the federal alliance, and for no other use.

Three members at least to execute the trust.

*Agreeably to the above recited act, the territory therein alluded to, was, on the first day of March 1784, transferred to the United States, by deed, signed by Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, then delegates in congress. from the commonwealth of Virginia. —[See Vol. I. page 472, U. S. Laws.]

ACT OF VIRGINIA.

An Act concerning the Territory ceded by this Commonwealth to the United States.

[PASSED DECEMBER 30, 1788.]

1. WHEREAS the United States in congress assembled, did, on the seventh day of July, in the year of our Lord one thousand seven hundred and eighty-six, state certain reasons, shewing that a division of the territory which hath been ceded to the said United States by this commonwealth, into states, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower congress to make such a division of the said territory into distinct and republican states, not more than five nor less than three in number, as the situation of that country and future circumstances might require: And the said United States in congress assembled, have, in an ordinance for the government of the territory north-west of the river Ohio, passed on the thirteenth of July, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original states, and the people and states in the said territory, viz:

[Here the fifth article of compact of the ordinance of congress of 13th July 1787, is recited verbatim.]

And it is expedient that this commonwealth do assent to the proposed alteration so as to ratify and confirm the said article of compact between the original states, and the people and states in the said territory:

2. *Be it therefore enacted by the General Assembly, That* the afore-recited Article of compact between the original states, and the people and states in the territory north-west of Ohio river, be, and the same is hereby ratified and confirmed, any thing to the contrary, in the deed of cession of the said territory by this commonwealth to the U. States, notwithstanding.

An article of the compact between the U. S. and the people and states N. W. of the Ohio, ratified by this commonwealth.

SEVENTH section of an act of the commonwealth of Virginia, entitled "an act concerning the erection of the District of Kentucky into an independent state." (Passed December 18th, 1789.)

[See revised Laws of Virginia, 1st Vol. page 59.]

SEC. 7. That the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this commonwealth lies therein, shall be free and common to the citizens of the United States; and the respective jurisdictions of this commonwealth, and of the proposed state, on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.

ORDINANCE OF CONGRESS.

In Congress, July 13, 1787.

An ordinance for the government of the territory of the United States
north-west of the river Ohio.

Be it ordained by the United States in Congress assembled,
That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

Rules of inheritance, &c.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them: and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parents' share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as herein after mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighbouring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Governor.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress: he shall

reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed, from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months to the secretary of congress: There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to congress, from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles

Secretary.

Adoption and
publication of
laws.Officers of mi-
litia.Appointment
of magistrates
&c.Civil divisions
of the district.

shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Right of representation;
general assembly, &c.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided that, for every five hundred free male inhabitants, there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature; provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; provided also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

Constitution of the legislative power, &c.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to wit:—As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid: and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term: And every five years, four months at least before the expi-

ration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting during this temporary government.

Oath of fidelity and of office to be taken.

Delegate to congress.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Articles of compact, &c

ART. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons

shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect, private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters

leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same,* shall become fixed and established as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle states shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern states shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

[*See consent
of Virginia,
page 23.]

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always, that any person escaping into the same, from whom labour or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labour or service as aforesaid.

ACT OF CONGRESS.

An act to provide for the government of the territory north-west of the river Ohio.

[APPROVED, AUGUST 7, 1789.]

WHEREAS, In order that the ordinance of the United States in congress assembled, for the government of the territory north-west of the river Ohio, may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States:

Governor to make communication to the president of the U. S. President and senate to appoint territorial officers.

President to commission; and remove.

In case of death, removal, &c. the secretary to execute the power of governor during the vacancy.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases in which, by the said ordinance, any information is to be given, or communication made, by the governor of the said territory, to the United States in congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information and to make such communication to the president of the United States; and the president shall nominate, and, by and with the advice and consent of the Senate, shall appoint all officers which, by the said ordinance, were to have been appointed by the United States in Congress assembled; and all officers, so appointed, shall be commissioned by him; and in all cases where the United States in Congress assembled, might, by the said ordinance, revoke any commission or remove from any office, the president is hereby declared to have the same powers of revocation and removal.

SEC. 2. *And be it further enacted,* That in case of the death, removal, resignation, or necessary absence, of the governor of the said territory, the secretary thereof shall be, and he is hereby authorized and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation, or necessary absence, of the said governor.

 ACT OF CONGRESS.

An Act to divide the territory of the United States north-west of the Ohio into two separate governments.

[APPROVED, MAY 7, 1800.]

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,*

That, from and after the fourth day of July next, all that part of the territory of the United States north-west of the Ohio river, which lies to the westward of a line beginning at the Ohio, opposite to the mouth of Kentucky river, and running thence to Fort Recovery, and thence north, until it shall intersect the territorial line between the United States and Canada, shall, for the purposes of temporary government, constitute a separate territory, and be called the Indiana territory.

The Indiana territory constituted, its boundaries &c

SEC. 2. *And be it further enacted*, That there shall be established within the said territory a government, in all respects similar to that provided by the ordinance of congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States north-west of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people by the said ordinance.

Government of the Indiana territory, the same as that established by ordinance of 13th July, 1787, &c.

SEC. 3. *And be it further enacted*, That the officers for the said territory, who, by virtue of this act, shall be appointed by the president of the United States, by and with the advice and consent of the senate, shall, respectively, exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the territory of the United States north-west of the river Ohio: And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor; *Provided*, That the president of the United States shall have full power, in the recess of congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of congress.

Officers of the territory to be appointed by the president and senate, to perform the duties, and receive the compensations, provided, &c. by ordinance and the laws, for similar officers in the north-western territory, &c. Proviso.

SEC. 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States north-west of the Ohio river, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana territory, whenever satisfactory evidence shall be given to the governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided*, That until there shall be five thousand free male inhabitants of twenty-one years and upwards, in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in said territory, agreeably to the number of free males,

So much of the ordinance &c. as relates to the organization of the general assembly in the north-western territory, &c. to operate in the Indiana territory, &c. Proviso.

of the age of twenty-one years and upwards, which they may respectively contain.

Nothing in this act to affect the government in force in the n.w. territory, except as to the Indiana territory, &c. Proviso.

SEC. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the territory of the United States north-west of the Ohio river, further than to prohibit the exercise thereof within the Indiana territory, from and after the aforesaid fourth day of July next: *Provided*, That whenever that part of the territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, and running thence, due north, to the territorial line between the United States and Canada, shall be erected into an independent state, and admitted into the union on an equal footing with the original states, thenceforth said line shall become and remain permanently the boundary line between such state and the Indiana territory; any thing in this act contained to the contrary notwithstanding.

Chillicothe the seat of government for the n.w. territory, and St. Vincennes the seat of government for Indiana, &c.

SEC. 6. *And be it further enacted*, That, until it shall be otherwise ordered by the legislatures of the said territories, respectively, Chillicothe, on Scioto river, shall be the seat of the government of the territory of the United States north-west of the Ohio river; and that Saint Vincennes, on the Wabash river, shall be the seat of the government for the Indiana territory.

ACT OF CONGRESS.

An Act for dividing the Indiana Territory into two separate governments.

[APPROVED, FEBRUARY 3, 1809.]

Illinois territory formed.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That, from and after the first day of March next, all that part of the Indiana Territory which lies west of the Wabash river, and a direct line drawn from the said Wabash river and Post Vincennes, due north, to the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called Illinois.

Government thereof.

SEC. 2. *And be it further enacted*, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States north-west of the river Ohio, and

by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory north-west of the river Ohio;" and the inhabitants thereof shall be entitled to and enjoy all and singular the rights, privileges, and advantages, granted and secured to the people of the territory of the United States north-west of the river Ohio, by the said ordinance.

SEC. 3. *And be it further enacted*, That the officers for the said territory who, by virtue of this act, shall be appointed by the president of the United States, by and with the advice and consent of the senate, shall, respectively, exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana territory. And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor: *Provided*, That the president of the United States shall have full power, in the recess of congress, to appoint and commission all officers herein authorized, and their commissions shall continue in force until the end of the next session of congress.

Officers, how appointed.

Proviso.

SEC. 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States north-west of the river Ohio, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Illinois territory, whenever satisfactory evidence shall be given to the governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided*, That until there shall be five thousand free male inhabitants of twenty-one years and upwards in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in the said territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

Organization of a general assembly.

Proviso.

SEC. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the Illinois territory, from and after the aforesaid first day of March next.

Government of Indiana territory not affected.

SEC. 6. *And be it further enacted*, That all suits, process, and proceedings, which, on the first day of March next,

Provision as to suits pending.

shall be pending in the court of any county which shall be included within the said territory of Illinois, and also all suits, process, and proceedings, which, on the said first day of March next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Illinois aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

Taxes to be
still collected.

SEC. 7. *And be it further enacted,* That nothing in this act contained shall be so construed as to prevent the collection of taxes which may, on the first day of March next, be due to the Indiana territory on lands lying in the said territory of Illinois.

Seat of go-
vernment.

SEC. 8. *And be it further enacted,* That, until it shall be otherwise ordered by the legislature of the said Illinois territory, Kaskaskia, on the Mississippi river, shall be the seat of government for the said Illinois territory.

ACT OF CONGRESS.

An Act to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states.

[APPROVED, APRIL 19, 1816.]

Inhabitants
authorized to
form a consti-
tution, &c.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the inhabitants of the territory of Indiana be, and they are hereby authorized, to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union upon the same footing with the original states, in all respects whatever.

Boundaries of
the state.

SEC. 2. *And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to wit: Bounded on the east by the meridian line which forms the western boundary of the state of Ohio; on the south, by the river Ohio, from the mouth of the Great Miami river, to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the north-western shore of the said river; and from thence by a due north line,

until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio; *Provided*, That the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory north-west of the river Ohio: *Provided also*, That the said state shall have concurrent jurisdiction on the river Wabash, with the state to be formed west thereof, so far as the said river shall form a common boundary to both.

Proviso.

SEC. 3. *And be it further enacted*, That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory at least one year previous to the day of election, and shall have paid a county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said territory, according to the apportionment made by the legislature thereof, at their last session, to wit: From the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives; from the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark, five representatives; from the county of Harrison, five representatives; from the county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid, shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in the said territory; and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said territory, regulating elections therein for members of the house of representatives.

Qualifications of electors.

Apportionment.

SEC. 4. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby authorized, to meet at the seat of the government of the said territory on the second Monday of June next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not expedient

Convention, time & place of meeting.

ent at that time, to form a constitution and state government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: or if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance: and shall then form for the people of said territory, a constitution and state government: *Provided*, That the same, whenever formed, shall be republican, and not repugnant to those articles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, which are declared to be irrevocable between the original states and the people and states of the territory north-west of the river Ohio; excepting so much of said articles as relate to the boundaries of the states therein to be formed.

SEC. 5. And be it further enacted, That until the next general census shall be taken, the said state shall be entitled to one representative in the House of Representatives of the United States.

SEC. 6. And be it further enacted, That the following propositions be, and the same are hereby offered to the convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States.

First. That the section numbered sixteen, in every township, and when such section has been sold, granted or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

Second. That all salt springs within the said territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole, the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used under such terms, conditions, and regulations as the legislature of the said state shall direct: provided the said legislature shall never sell nor lease the same, for a longer period than ten years at any one time.

Third. That five per cent. of the nett proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of

Its powers and duties.

Proviso.

One representative in congress.

Propositions to the convention.

School section.

Salt springs reserved.

Five per cent. for roads and canals.

which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of Congress.

Fourth. That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature.

Seminary
township.

Fifth. That four sections of land be, and the same are hereby granted to the said state, for the purpose of fixing their seat of government thereon, which four sections shall, under the direction of the legislature of said state, be located at any time in such township and range, as the legislature aforesaid may select, on such lands as may hereafter be acquired by the United States, from the Indian tribes within the said territory: *Provided*, That such locations shall be made prior to the public sale of the lands of the United States, surrounding such location: *And provided always*, That the five foregoing propositions, herein offered, are, on the conditions that the convention of the said state shall provide by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax, laid by order or under any authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years, from and after the day of sale.

Seat of go-
vernment do-
nation.

Lands sold by
the U. S. to be
exempt from
taxation for
five years.

ORDINANCE.

BE IT ORDAINED by the representatives of the people of the Territory of Indiana, in Convention met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen, That we do, for ourselves and our posterity agree, determine, declare, and ordain, that we will and do hereby accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled "An act to enable the people of the Indiana territory to form a state government and constitution, and for the admission of such state into the Union, on an equal footing with the original states."

And we do, further for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said

Propositions
of congress ac-
cepted.

Lands sold by
the U. S. ex-
empt from
taxation.

This ordin-
ance irrevoc-
able.

state of Indiana, as fixed, prescribed, laid down, and established, in the act of Congress aforesaid; and we do also, further for ourselves and our posterity, hereby agree, determine, declare and ordain, that each and every tract of land sold by the United States, lying within the said state, and which shall be sold from and after the first day of December next, shall be and remain exempt from any tax laid by order or under any authority of the said state of Indiana, or by or under the authority of the general assembly thereof, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land: and we do, moreover, for ourselves and our posterity, hereby declare and ordain, that this ordinance, and every part thereof, shall forever be and remain irrevocable and inviolate, without the consent of the United States, in Congress assembled, first had and obtained for the alteration thereof, or any part thereof.

JONATHAN JENNINGS,

President of the Convention.

Attest, WILLIAM HENDRICKS, *Secretary.*

June 29th, 1816.

CONSTITUTION OF INDIANA.

Preamble.

WE the representatives of the people of the territory of Indiana, in convention, met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen, and of the Independence of the United States, the fortieth, having the right of admission into the general government, as a member of the Union, consistent with the constitution of the United States, the ordinance of Congress of one thousand seven hundred and eighty-seven, and the law of Congress, entitled "An act to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of the state of INDIANA.

ARTICLE I.

Natural rights SEC. 1. That the general, great, and essential principles of liberty and free government may be recognized, and unalterably established: WE DECLARE, That all men are born

equally free and independent, and have certain natural, inherent, and unalienable rights; among which are, the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

SEC. 2. That all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter or reform their government in such manner as they may think proper.

All power inherent in the people.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences: That no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent: That no human authority can, in any case whatever, control or interfere with the rights of conscience: And that no preference shall ever be given by law to any religious societies, or modes of worship; and no religious test shall be required as a qualification to any office of trust or profit.

Freedom of worship.

No religious test.

SEC. 4. That elections shall be free and equal.

SEC. 5. That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petit misdemeanors, which shall be punished by fine only, not exceeding three dollars, in such manner as the legislature may prescribe by law, the right of trial by jury shall remain inviolate.

Trial by jury in civil as well as criminal cases.

SEC. 6. That no power of suspending the operation of the laws shall be exercised, except by the legislature, or its authority.

SEC. 7. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without a just compensation being made therefor.

Compensation for services and property.

SEC. 8. The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No search unless on probable cause, oath, &c.

SEC. 9. That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty.

Freedom of the press and of speech.

Prosecutions
for the publi-
cation of pa-
pers, libels, &c.

SEC. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for the public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Justice with-
out denial or
delay.

SEC. 11. That all courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by the due course of law; and right and justice administered without denial or delay.

No person put
to answer, &c.
but by pre-
sentment, in-
dictment, or
impeachment

SEC. 12. That no person arrested, or confined in jail, shall be treated with unnecessary rigour, or be put to answer any criminal charge but by presentment, indictment, or impeachment.

Speedy public
trial by jury.

SEC. 13. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favour; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed; and shall not be compelled to give evidence against himself, nor shall be twice put in jeopardy for the same offence.

Bail.

SEC. 14. That all persons shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety may require it.

Habeas cor-
pus.

SEC. 15. Excessive bail shall not be required, excessive fines shall not be imposed, nor cruel and unusual punishments inflicted.

Debtor not to
be continued
in prison.

SEC. 16. All penalties shall be proportioned to the nature of the offence.

No ex post
facto law.

SEC. 17. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate, for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

SEC. 18. No ex post facto law, nor any law impairing the validity of contracts, shall ever be made, and no conviction shall work corruption of blood, nor forfeiture of estate.

SEC. 19. That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances.

Right to bear
arms.

SEC. 20. That the people have a right to bear arms for the defence of themselves, and the state; and that the mili-

tary shall be kept in strict subordination to the civil power.

SEC. 21. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

No soldier to be quartered, &c.

SEC. 22. That the legislature shall not grant any title of nobility, or hereditary distinctions, nor create any office, the appointment to which shall be for a longer term than good behaviour.

No title of nobility.

SEC. 23. That emigration from the state shall not be prohibited.

SEC. 24. To guard against any encroachments on the rights herein retained, we declare, that every thing in this article, is excepted out of the general powers of government, and shall forever remain inviolable.

ARTICLE II.

The powers of the government of Indiana, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another: And no person, or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Powers of the government divided into three departments.

ARTICLE III.

SEC. 1. The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

Legislative authority, how vested.

SEC. 2. The general assembly may, within two years after their first meeting, and shall, in the year eighteen hundred and twenty, and every subsequent term of five years, cause an enumeration to be made of all the white male inhabitants above the age of twenty-one years. The number of representatives shall, at the several periods of making such enumeration, be fixed by the general assembly, and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age, in each; and shall never be less than twenty-five nor greater than thirty-six, until the number of white male inhabitants above twenty-one years of age, shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six nor exceed one hundred.

Enumeration every 5 years.

Representatives, how apportioned.

SEC. 3. The representatives shall be chosen annually, by the qualified electors of each county, respectively, on the first Monday of August.

Chosen annually.

Qualifications SEC. 4. No person shall be a representative, unless he shall have attained the age of twenty-one years; and shall be a citizen of the United States, and an inhabitant of this state; and shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, if the county shall have been so long erected; but if not, then within the limits of the county or counties out of which it shall have been taken, unless he shall have been absent on the public business of the United States, or of this state, and shall have paid a state or county tax.

Senators, how chosen and classed. SEC. 5. The senators shall be chosen for three years, on the first Monday in August, by the qualified voters for representatives; and on their being convened, in consequence of the first election, they shall be divided by lot, from their respective counties or districts, as near as can be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; and the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one third thereof, as near as possible, may be annually chosen, forever thereafter.

When & how apportioned. SEC. 6. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the general assembly, and apportioned among the several counties or districts, to be established by law, according to the number of white male inhabitants of the age of twenty one years in each, and shall never be less than one third, nor more than one half of the number of representatives.

Qualifications SEC. 7. No person shall be a senator unless he shall have attained the age of twenty-five years, and shall be a citizen of the United States, and shall, next preceding the election, have resided two years in the state, the last twelve months of which, in the county or district in which he may be elected, if the county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken; unless he shall have been absent on the public business of the United States, or of this state, and shall, moreover, have paid a state or county tax.

Speaker. SEC. 8. The house of representatives, when assembled, shall choose a speaker, and its other officers: and the senate shall choose its officers, except the president; and each shall be judges of the qualifications and elections of its members, and sit upon its own adjournments. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

Journal. SEC. 9. Each house shall keep a journal of its proceed-

ings, and publish them. The yeas and nays of the members, on any question, shall, at the request of any two of them, be entered on the journals.

SEC. 10. Any one member of either house shall have liberty to dissent from, and protest against, any act or resolution, which he may think injurious to the public, or any individual or individuals, and have the reason of his dissent entered on the journals. Protest.

SEC. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state. Rules.
May expel a member.

SEC. 12. When vacancies happen in either branch of the general assembly, the governor, or the person exercising the power of governor, shall issue writs of elections to fill such vacancies. Vacancies, how filled.

SEC. 13. Senators and representatives shall in all cases except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Privilege.

SEC. 14. Each house may punish, by imprisonment, during their session, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence; provided such imprisonment shall not, at any one time, exceed twenty-four hours. Power to punish contempts.

SEC. 15. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house, may require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting. Doors kept open, except, &c.
Adjournment.

SEC. 16. Bills may originate in either house, but may be altered, amended, or rejected, by the other.

SEC. 17. Every bill shall be read on three different days in each house, unless, in case of urgency, two-thirds of the house, where such bill may be depending, shall deem it expedient to dispense with this rule: And every bill, having passed both houses, shall be signed by the president and speaker of their respective houses. Bills.

SEC. 18. The style of the laws of this state shall be, "*Be it enacted by the General Assembly of the state of Indiana.*" Style of the laws.

SEC. 19. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject, as in other bills.

Persons not eligible.

SEC. 20. No person, holding any office under the authority of the president of the United States or of this state, militia officers excepted, shall be eligible to a seat in either branch of the general assembly, unless he resign his office previous to his election; nor shall any member of either branch of the general assembly, during the time for which he is elected, be eligible to any office, the appointment of which is vested in the general assembly: *Provided*, That nothing in this constitution shall be so construed as to prevent any member of the first session of the first general assembly from accepting any office that is created by this constitution, or the constitution of the United States, and the salaries of which are established.

Money how drawn from the treasury.

SEC. 21. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Statement of receipts and expenditures, how published.

SEC. 22. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws, at every annual session of the general assembly.

Impeachment

SEC. 23. The house of representatives shall have the sole power of impeaching; but a majority of all the members elected must concur in such impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of a majority of all the senators elected.

For what crimes, & extent of judgment therein.

SEC. 24. The governor, and all civil officers of the state, shall be removed from office, on impeachment for and conviction of, treason, bribery, or other high crimes and misdemeanors; but judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honour, profit or trust, under this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.

Sessions, when held.

SEC. 25. The first session of the general assembly shall commence on the first Monday of November next; and forever after, the general assembly shall meet on the first Monday in December, in every year, and at no other period, unless directed by law, or provided for by this constitution.

Holder of public money not entitled to a seat, in either House of the general assembly.

SEC. 26. No person, who hereafter may be a collector, or holder of public money, shall have a seat in either house of the general assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

ARTICLE IV.

Executive

SEC. 1. The supreme executive power of this state shall

be vested in a governor, who shall be styled, The Governor of the state of Indiana. power vested in a Governor.

SEC. 2. The governor shall be chosen by the qualified electors, on the first Monday in August, at the places where they shall respectively vote for representatives. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal, and highest in votes, one of them shall be chosen governor by the joint vote of the members of both houses. Contested elections shall be determined by a committee to be selected from both houses of the general assembly, and formed and regulated in such manner as shall be directed by law. How & when chosen.

SEC. 3. The governor shall hold his office during three years, from and after the third day of the first session of the general assembly, next ensuing his election, and until a successor shall be chosen and qualified, and shall not be capable of holding it longer than six years in any term of nine years. Term of office.

SEC. 4. He shall be at least thirty years of age, and shall have been a citizen of the United States ten years, and have resided in the state five years next preceding his election; unless he shall have been absent on the business of this state, or of the United States: *Provided*, That this shall not disqualify any person from the office of governor, who shall be a citizen of the United States, and shall have resided in the Indiana territory two years next preceding the adoption of this constitution. Qualifications

SEC. 5. No member of congress, or person holding any office under the United States, or this state, shall exercise the office of governor or lieutenant governor. Who shall not hold the office of governor, &c.

SEC. 6. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected. Compensation.

SEC. 7. He shall be commander in chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the general assembly. Commander in chief.

SEC. 8. He shall nominate, and by and with the advice and consent of the senate, appoint and commission all officers, the appointment of which is not otherwise directed by this constitution; and all offices which may be created by Nominate, appoint, & commission officers.

the general assembly, shall be filled in such manner as may be directed by law.

Fill vacancies SEC. 9. Vacancies that may happen in offices, the appointment of which is vested in the governor and senate, or in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions that shall expire at the end of the next session.

**Remit fines, & grant re-
prieves.** SEC. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments.

SEC. 11. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

**Make communications
to the general
assembly.** SEC. 12. He shall, from time to time, give to the general assembly information of the affairs of the state, and recommend to their consideration such measures as he shall deem expedient.

**Convene the
Legislature.** SEC. 13. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next annual session.

SEC. 14. He shall take care that the laws be faithfully executed.

**Lieutenant
Governor,
how & when
chosen.** SEC. 15. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

**He shall be
president of
the senate.** SEC. 16. He shall, by virtue of his office, be president of the senate, have a right, when in committee of the whole, to debate, and vote on all subjects, and when the senate are equally divided, to give the casting vote.

**When acting
governor.** SEC. 17. In case of impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the powers and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached, shall return or be acquitted.

**President of
senate pro
tem.** SEC. 18. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And if during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to

qualify, resign, die, or be absent from the state, the president of the senate pro tem, shall, in like manner, administer the government, until he shall be superseded by a governor, or lieutenant governor. The lieutenant governor, while he acts as president of the senate, shall receive for his services, the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more: And during the time he administers the government, as governor, shall receive the same compensation which the governor would have received and been entitled to, had he been employed in the duties of his office, and no more.

His compensation.

SEC. 19. The president pro tempore of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received had he been employed in the duties of his office, and no more.

SEC. 20. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a president pro tempore.

Secretary of State may convene the senate, to choose a president pro tem.

SEC. 21. A secretary of state shall be chosen by the joint ballot of both houses of the general assembly, and be commissioned by the governor for four years, or until a new secretary be chosen and qualified. He shall keep a fair register, and attest all the official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the general assembly; and shall perform such other duties as may be enjoined him by law.

How chosen.

His duties.

SEC. 22. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor: if he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but, in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor, within five days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like man-

Bills to be presented to the governor, &c.

her as if he had signed it; unless the general adjournment prevents its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Joint resolutions to receive the same sanction as bills.

SEC. 23. Every resolution to which the concurrence of both houses may be necessary, shall be presented to the governor, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

Treasurer and Auditor, how chosen.

SEC. 24. There shall be elected, by joint ballot of both houses of the general assembly, a treasurer, and auditor, whose powers and duties shall be prescribed by law, and who shall hold their offices three years, and until their successors be appointed and qualified.

Sheriff and coroner how chosen, &c.

SEC. 25. There shall be elected in each county, by the qualified electors thereof, one sheriff, and one coroner, at the times and places of holding elections for members of the general assembly. They shall continue in office two years, and until successors shall be chosen and duly qualified: *Provided*. That no person shall be eligible to the office of sheriff more than four years, in any term of six years.

Seal of state.

SEC. 26. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called the seal of the state of Indiana.

ARTICLE V.

Judiciary power, how vested

SEC. 1. The judiciary power of this state, both as to matters of law and equity, shall be vested in one supreme court, in circuit courts, and in such other inferior courts as the general assembly may from time to time direct and establish.

Supreme court to consist of three judges.

SEC. 2. The supreme court shall consist of three judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Provided* nothing in this article shall be so construed as to prevent the general assembly from giving the supreme court original jurisdiction in capital cases, and cases in chancery, where the president of the circuit court may be interested or prejudiced.

Jurisdiction.

Circuit courts each to consist of a president and two associates.

SEC. 3. The circuit courts shall each consist of a president, and two associate judges. The state shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein. The president and associate judges, in their respective counties, shall have common law and chancery jurisdiction, as also complete criminal jurisdiction, in all such cases, and in such manner as may be prescribed

Jurisdiction.

by law. The president alone, in the absence of the associate judges, or the president and one of the associate judges, in the absence of the other, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: *Provided*, That nothing herein contained shall prevent the general assembly from increasing the number of circuits, and presidents, as the exigencies of the state may from time to time require.

SEC. 4. The judges of the supreme court, the circuit, and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office. Judges, their term of office:

SEC. 5. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state, as also the presidents of the circuit courts in their respective circuits, and the associate judges in their respective counties. Conservators of the peace.

SEC. 6. The supreme court shall hold its sessions at the seat of government, at such times as shall be prescribed by law: And the circuit courts shall be held in the respective counties as may be directed by law. Courts, where holden.

SEC. 7. The judges of the supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The presidents of the circuit courts shall be appointed by joint ballot of both branches of the general assembly; and the associate judges of the circuit courts shall be elected by the qualified electors in the respective counties. Judges, how appointed.

SEC. 8. The supreme court shall appoint its own clerk, and the clerks of the circuit court, in the several counties, shall be elected by the qualified electors in the several counties; but no person shall be eligible to the office of clerk of the circuit court in any county, unless he shall first have obtained, from one or more of the judges of the supreme court, or from one or more of the presidents of the circuit courts, a certificate, that he is qualified to execute the duties of the office of clerk of the circuit court: *Provided*, That nothing herein contained shall prevent the circuit courts, in each county, from appointing a clerk pro tem. until a qualified clerk may be duly elected: *And provided also*, That the said clerks respectively, when qualified and elected, shall hold their offices seven years, and no longer, unless re-appointed. Clerks, how appointed, &c

SEC. 9. All clerks shall be removable by impeachment, as in other cases.

SEC. 10. When any vacancies happen in any of the

Successors of judges and clerks, to be appointed for residue of terms.

Style of process.

Justices of the peace.

Elections, who entitled to vote.

-By ballot.

Electors free from arrest.

Persons infamous, not eligible, &c.

Right of suffrage not affected by temporary absence.

Militia to be armed, equipped, &c. according to law.

courts, occasioned by the death, resignation, or removal from office, of any judge of the supreme or circuit courts, or any of the clerks of the said courts, a successor shall be appointed in the same manner as herein before prescribed, who shall hold his office for the period which his predecessor had to serve, and no longer, unless re-appointed.

SEC. 11. The style of all process shall be, "The state of Indiana." All prosecutions shall be carried on in the name, and by the authority of the state of Indiana; and all indictments shall conclude, against the peace and dignity of the same.

SEC. 12. A competent number of justices of the peace shall be elected by the qualified electors in each township, in the several counties; and shall continue in office five years, if they shall so long behave well; whose powers and duties shall, from time to time, be regulated and defined by law.

ARTICLE VI.

SEC. 1. In all elections, not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the state one year immediately preceding such election, shall be entitled to vote, in the county where he resides; except such as shall be enlisted in the army of the United States, or their allies.

SEC. 2. All elections shall be by ballot: *Provided*, That the general assembly may, (if they deem it more expedient) at their session in eighteen hundred and twenty-one, change the mode, so as to vote *viva voce*; after which time it shall remain unalterable.

SEC. 3. Electors shall, in all cases, except treason, felony, or breach of the peace, be free from arrest, in going to, during their attendance at, and in returning home from elections.

SEC. 4. The general assembly shall have full power to exclude from electing or being elected, any person convicted of any infamous crime.

SEC. 5. Nothing in this article shall be so construed as to prevent citizens of the United States, who were actual residents at the time of adopting this constitution, and who, by the existing laws of this territory, are entitled to vote, or persons who have been absent from home on a visit, or necessary business, from the privilege of electors.

ARTICLE VII.

SEC. 1. The militia of the state of Indiana shall consist of all free, able bodied male persons, negroes, mulattoes, and Indians excepted, resident in the said state, between the ages of eighteen and forty-five years; except such persons

as now are, or hereafter may be, exempted by the laws of the United States, or of this state; and shall be armed, equipped, and trained, as the general assembly may provide by law.

SEC. 2. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty: *Provided*, Such person or persons shall pay an equivalent for such exemption: which equivalent shall be collected annually by a civil officer, and be hereafter fixed by law, and shall be equal, as near as may be, to the lowest fines assessed on those privates in the militia who may neglect or refuse to perform militia duty.

Persons conscientiously scrupulous exempt, by paying an equivalent.

SEC. 3. Captains and subalterns shall be elected by those persons, in their respective company districts, who are subject to perform militia duty; and the captain of each company shall appoint the non-commissioned officers to said company.

Captains and subalterns, how elected.

SEC. 4. Majors shall be elected by those persons, within the bounds of their respective battallion districts, subject to perform militia duty: and colonels shall be elected by those persons, within the bounds of their respective regimental districts, subject to perform militia duty.

Field officers how elected.

SEC. 5. Brigadier Generals shall be elected by the commissioned officers within the bounds of their respective brigades; and major generals shall be elected by the commissioned officers within the bounds of their respective divisions.

General Officers, how elected.

SEC. 6. Troops and squadrons of cavalry, and companies of artillery, riflemen, grenadiers, or light infantry, may be formed in the said state, in such manner as shall be prescribed by law: *Provided however*, That every troop or squadron of cavalry, company of artillery, riflemen, grenadiers, or light infantry, which may hereafter be formed within the said state, shall elect their own officers.

Light companies, how formed.

SEC. 7. The governor shall appoint the adjutant general and quarter master generals, as also his aids-de-camp.

Staff of governor.

SEC. 8. Major generals shall appoint their aids-de-camp, and all other division staff officers; brigadier generals shall appoint their brigade majors, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

—of general officers.

SEC. 9. All militia officers shall be commissioned by the governor, and shall hold their commissions during good behaviour, or until they shall arrive at the age of sixty years.

All militia officers commissioned by the governor.

SEC. 10. The general assembly shall, by law, fix the method of dividing the militia of the said state into divisions, brigades, regiments, battallions and companies, and shall also fix the rank of all staff officers.

Further organization to be prescribed by law.

ARTICLE VIII.

Amendments, how attained. SEC. 1. Every twelfth year after this constitution shall have taken effect, at the general election held for governor, there shall be a poll opened, in which the qualified electors of the state, shall express, by vote, whether they are in favour of calling a convention or not; and if there should be a majority of all the votes given at such election, in favour of a convention, the governor shall inform the next general assembly thereof, whose duty it shall be, to provide by law, for the election of the members to the convention, the number thereof, and the time and place of their meeting: which law shall not be passed, unless agreed to by a majority of all the members elected to both branches of the general assembly; and which convention when met, shall have it in their power to revise, amend, or change the constitution. But, as the holding any part of the human creation in slavery, or involuntary servitude, can only originate in usurpation and tyranny, no alteration of this constitution shall ever take place so as to introduce slavery or involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.

No amendment shall ever permit the introduction of slavery

ARTICLE IX.

Education. SEC. 1. Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, it shall be the duty of the general assembly, to provide by law for the improvement of such lands as are, or hereafter may be granted by the United States, to this state, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object for which they are or may be intended: But no lands granted for the use of schools or seminaries of learning, shall be sold by authority of this state, prior to the year eighteen hundred and twenty; and the monies which may be raised out of the sale of any such lands, or otherwise obtained for the purposes aforesaid, shall be and remain a fund for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools. The general assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific, and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to counte-

Seminary lands not to be sold prior to the year 1820.

The general assembly shall pass laws, for the encouragement of the arts and sciences.

nance and encourage the principles of humanity, industry, and morality.

SEC. 2. It shall be the duty of the general assembly, as soon as circumstances will permit, to provide by law, for a general system of education, ascending in a regular gradation from township schools to a state university, wherein tuition shall be gratis, and equally open to all.

Regular system of education.

SEC. 3. And for the promotion of such salutary end, the money which shall be paid as an equivalent by persons exempt from militia duty, except in times of war, shall be exclusively, and in equal proportion, applied to the support of county seminaries; also all fines assessed for any breach of the penal laws, shall be applied to said seminaries, in the counties wherein they shall be assessed.

Monies paid by persons exempt from military duty, &c. applied to county seminaries.

SEC. 4. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on the principles of reformation, and not of vindictive justice: And also to provide one or more farms, to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles, that such persons may therein find employment, and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence.

Penal code on the principles of reformation

SEC. 5. The general assembly, at the time they lay off a new county, shall cause at least ten per cent. to be reserved out of the proceeds of the sale of town lots, in the seat of justice of such county, for the use of a public library for such county, and, at the same session, they shall incorporate a library company, under such rules and regulations as will best secure its permanence, and extend its benefits.

Reservation of 10 per cent. &c. in new counties, for county libraries.

ARTICLE X.

SEC. 1. There shall not be established or incorporated, in this state, any bank or banking company, or monied institution, for the purpose of issuing bills of credit, or bills payable to order or bearer: *Provided*, That nothing herein contained shall be so construed as to prevent the general assembly from establishing a state bank, and branches, not exceeding one branch for any three counties, to be established at such place, within such counties, as the directors of the state bank may select; provided there be subscribed, and paid, in specie, on the part of individuals, a sum equal to thirty thousand dollars: *Provided also*, That the bank at Vincennes, and the Farmers' and Mechanics' bank of Indiana, at Madison, shall be considered as incorporated banks, according to the true tenor of the charters granted to said banks, by the legislature of the Indiana territory; *Provided*, That nothing herein contained shall be so construed as to

Banks.

prevent the general assembly from adopting either of the aforesaid banks as the state bank: And in case either of them shall be adopted as the state bank, the other may become a branch, under the rules and regulations herein before prescribed.

ARTICLE XI.

SEC. 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this state, shall, before entering on the duties of said office, take an oath or affirmation, before any person lawfully authorized to administer oaths, to support the constitution of the United States, and the constitution of this state, and also an oath of office.

SEC. 2. Treason against this state shall consist only in levying war against it, in adhering to its enemies, or giving them aid and comfort.

SEC. 3. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 4. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.

SEC. 5. Every person shall be disqualified from serving as governor, lieutenant-governor, senator, or representative, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, treat or reward, to procure his election.

SEC. 6. All officers shall reside within the state; and all district, county, or town officers, within their respective districts, counties or towns, (the trustees of the town of Clarksville excepted,) and shall keep their respective offices at such places therein as may be directed by law; and all militia officers shall reside within the bounds of the division, brigade, regiment, battallion, or company, to which they may severally belong.

SEC. 7. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of the bounds of this state, be of any validity within the state.

SEC. 8. No act of the general assembly shall be in force until it shall have been published in print, unless in cases of emergency.

SEC. 9. All commissions shall be in the name, and by the authority, of the state of Indiana, and sealed with the state seal, and signed by the governor, and attested by the secretary of state.

SEC. 10. There shall be elected in each county, a recorder, who shall hold his office during the term of seven years, if he shall so long behave well: *Provided*, That nothing herein contained shall prevent the clerks of the circuit courts from holding the office of recorder.

SEC. 11. Corydon, in Harrison county shall be the seat of government of the state of Indiana until the year eighteen hundred and twenty-five, and until removed by law.

SEC. 12. The general assembly, when they lay off any new county, shall not reduce the old county, or counties, from which the same shall be taken, to a less content than four hundred square miles.

SEC. 13. No person shall hold more than one lucrative office at the same time, except as in this constitution expressly permitted.

SEC. 14. No person shall be appointed as a county officer, within any county, who shall not have been a citizen and an inhabitant therein, one year next preceding his appointment, if the county shall have been so long erected; but if the county, shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

SEC. 15. All town and township officers shall be appointed in such manner as shall be directed by law.

SEC. 16. The following officers of government shall not be allowed greater annual salaries, until the year eighteen hundred and nineteen, than as follows:—the governor, one thousand dollars; the secretary of state, four hundred dollars; the auditor of public accounts, four hundred dollars; the treasurer, four hundred dollars; the judges of the supreme court, eight hundred dollars each; the presidents of the circuit courts, eight hundred dollars each; and the members of the general assembly, not exceeding two dollars per day each, during their attendance on the same; and two dollars for every twenty-five miles they shall severally travel, on the most usual route in going to, and returning from the general assembly; after which time, their pay shall be regulated by law. But no law, passed to increase the pay of the members of the general assembly, shall take effect until after the close of the session at which such law shall have been passed.

SEC. 17. In order that the boundaries of the state of Indiana may more certainly be known and established, it is hereby ordained and declared, that the following shall be, and forever remain the boundaries of the said state, to wit: Bounded on the east, by the meridian line which forms the western boundary of the state of Ohio; on the south, by the Ohio river, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west, by a line

Recorder.

Corydon the seat of government, &c.

Old counties not to be reduced below 400 square miles.

No person shall hold more than one lucrative office.

County officers, their residence.

Salaries.

Boundaries of the state.

drawn along the middle of the Wabash river, from its mouth to a point, where a due north line drawn from the town of Vincennes would last touch the northwestern shore of the said Wabash river; and from thence, by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line; until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio.

ARTICLE XII.

All suits, recognizances, &c. continue, as if no change had taken place.

Fines and forfeitures inure, &c.

All territorial officers continue until superseded.

Territorial laws not inconsistent, &c. remain in force.

Governor use private seal, &c.

Executive officers, reside at seat of government.

Suits, &c. pending, to be

SEC. 1. That no evils or inconvenience may arise from the change of a territorial government to a permanent state government; it is declared by this constitution, that all rights, suits, actions, prosecutions, recognizances, contracts, and claims, both as it respects individuals and bodies corporate, shall continue as if no change had taken place in this government.

SEC. 2. All fines, penalties, and forfeitures; due and owing to the territory of Indiana, or any county therein, shall inure to the use of the state or county. All bonds executed to the governor, or any other officer, in his official capacity in the territory, shall pass over to the governor, or other officers of the state or county, and their successors in office, for the use of the state or county; or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

SEC. 3. The governor, secretary, and judges, and all other officers, both civil and military, under the territorial government, shall continue in the exercise of the duties of their respective departments, until the said officers are superseded under the authority of this constitution.

SEC. 4. All laws and parts of laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full force and effect until they expire, or be repealed.

SEC. 5. The governor shall use his private seal until a state seal be procured.

SEC. 6. The governor, secretary of state, auditor of public accounts, and treasurer, shall severally reside and keep all the public records, books, and papers, in any manner relating to their respective offices, at the seat of government: *Provided notwithstanding*, That nothing herein contained, shall be so construed as to affect the residence of the governor for the space of six months, and until buildings suitable for his accommodation, shall be procured at the expense of the state.

SEC. 7. All suits, pleas, complaints, and other proceedings now depending in any court of record, or justice's courts,

shall be prosecuted to final judgment and execution, and all appeals, writs of error, certiorari, injunction, or other proceedings whatever, shall progress, and be carried on, in the respective court or courts, in the same manner as is now provided by law, and all proceedings had therein, in as full and complete a manner as if this constitution were not adopted. And appeals and writs of error, may be taken from the circuit court, and general court, now established in the Indiana territory, to the supreme court in such manner as shall be provided for by law.

carried on, as if this constitution had not been adopted,

SEC. 8. The president of this convention shall issue writs of election, directed to the several sheriffs of the several counties, requiring them to cause an election to be held for governor, lieutenant governor, representative to the congress of the United States, members of the general assembly, sheriffs, and coroners, at the respective election districts in each county, on the first Monday in August next: Which election shall be conducted in the manner prescribed by the existing election laws of the Indiana territory; and the said governor, lieutenant governor, members of the general assembly, sheriffs, and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this constitution, and until their successor or successors are qualified, and no longer.

President of the convention, to issue writs of election.

SEC. 9. Until the first enumeration shall be made, as directed by this constitution, the county of Wayne shall be entitled to one senator, and three representatives; the county of Franklin, one senator, and three representatives; the county of Dearborn, one senator, and two representatives; the county of Switzerland, one representative; and the county of Jefferson and Switzerland, one senator; and the county of Jefferson, two representatives; the county of Clark, one senator, and three representatives; the county of Harrison, one senator, and three representatives; the counties of Washington, Orange, and Jackson, one senator; and the county of Washington, two representatives; the counties of Orange and Jackson, one representative each; the county of Knox, one senator, and three representatives; the county of Gibson, one senator, and two representatives; the counties of Posey, Warrick, and Perry, one senator; and each of the aforesaid counties of Posey, Warrick, and Perry, one representative.

First apportionment.

SEC. 10. All books, records, documents, warrants and papers, appertaining and belonging to the office of the territorial treasurer of the Indiana territory, and all monies therein, and all papers and documents in the office of the secretary of said territory, shall be disposed of as the general assembly of this state may direct.

Territorial records, &c. to be disposed of according to law.

SEC. 11. All suits, actions, pleas, complaints, prosecutions, Suits, records,

&c. in territorial courts, transferred to the state courts.

and causes whatsoever, and all records, books, papers, and documents, now in the general court, may be transferred to the supreme court established by this constitution: And all causes, suits, actions, pleas, complaints, and prosecutions whatsoever, now existing or pending in the circuit courts of this territory, or which may be therein at the change of government, and all records, books, papers and documents, relating to the said suits, or filed in the said courts, may be transferred over to the circuit courts established by this constitution, under such rules and regulations as the general assembly may direct.

Done in convention at Corydon, on the twenty-ninth day of June, in the year of our Lord eighteen hundred and sixteen, and of the Independence of the United States, the fortieth.

In witness whereof we have herunto subscribed our names.

JONATHAN JENNINGS.

President of the convention, and Delegate
from the county of Clark.

Delegates in convention from the county of

CLARK.

Thomas Carr,
John K. Graham,
James Lemon,
James Scott.

DEARBORN.

James Dill,
Ezra Ferris,
Solomon Manwaring.

FRANKLIN.

James Brownlee,
William H. Eads,
Robert Hanna,
Enoch McCarty,
James Noble.

GIBSON.

Alexander Devin,
Fred'k Rapp,
David Robb,
James Smith.

HARRISON.

John Boone,
Davis Floyd,
Daniel C. Lane,
Dennis Pennington,
Patrick Shields.

JEFFERSON.

Nath'l Hunt,
David H. Maxwell,
Samuel Smock.

KNOX.

John Badollet,
John Benefiel,
Jno. Johnson,
Wm. Polke,
B. Parke.

PERRY.

Charles Polke.

POSEY.

Dann Lynn.

SWITZERLAND.

William Cotton.

WASHINGTON.

John De Pauw,
William Graham,
William Lowe,
Samuel Milroy,
Robert McIntire.

WAYNE.

Patrick Baird,
Jeremiah Cox,
Hugh Cull,
Joseph Holman.

Attest, **WILLIAM HENDRICKS,** *Secretary.*

NATURALIZATION.

(See Gordon's "Digest of the Laws of the United States," page 270, &c. articles 1631 to 1648 inclusive.)

ART. 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise.

ART. 2. *First:* That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (a) two (b) years at least, before his admission, that it was bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof such alien may, at the time, be a citizen or subject.(c)

ART. 3. From this condition are exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June 1798, and the fourteenth day of April 1802, and who has continued to reside within the same:(d)

ART. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition (article 2) three years previous to his admission: But, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.(e)

ART. 5. When any alien, who shall have complied with the condition specified in article No. 2, and who shall have pursued the directions prescribed in article No. 9, may die, before he is actually naturalized, the widow and the child

(a) Act May 26th, 1824, sec. 3.

(d) Act March 26th, 1804, sec. 1.

(b) Ibid. 26th, 1824, sec. 4.

(e) Act May 26th, 1824, sec. 1.

(c) Act April, 1802.

dren of such alien shall be considered as citizens of the United States; and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.^(a)

ART. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.^(b)

ART. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same: The oath of the applicant shall, in no case, be allowed to prove his residence.^(c)

ART. 8. In case the alien, applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state, from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien, who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States.^(d)

ART. 9. In addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the fourteenth of April, 1802, shall, in order to become citizens of the United States, make registry, and obtain certificates in the following manner, to wit: every person desirous of being naturalized shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a parti-

(a) Act March 26th. 1804, sec. 2.

(c) Act 15th April, 1802, sec. 1, con. 3

(b) Act 15th April, 1802, sec. 1, con. 2

(d) Ibid. con. 4.

cular state; and such report shall ascertain the name, birth place, age, nation, and allegiance, of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate, under his hand and seal of office, of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for each certificate, granted pursuant to this act, to an individual or family, fifty cents; and such certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.^(a)

ART. 10. The certificate of report and registry, required as evidence of the time of arrival in the United States, according to article No. 9, and also a certificate from the proper clerk or prothonotary, of the declaration of intention, made before a court of record, and required by article No. 2, shall be exhibited by every alien on his application to be admitted a citizen of the United States, who shall have arrived within the limits, and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length, in the record of the court, admitting such alien; otherwise he shall not be deemed to have complied with the conditions requisite for becoming a citizen of the United States, and any pretended admission of an alien, who shall have arrived within the limits and under the jurisdiction of the United States, since the said eighteenth day of June, one thousand eight hundred and twelve, to be a citizen after the promulgation of this act, without such recital of each certificate at full length, shall be of no validity or effect under the act aforesaid. But no certificate of citizenship or of naturalization obtained before May the twenty-sixth, 1824, from any court of record within the United States, shall be deemed invalid in consequence of any omission to comply with the requisitions of the foregoing article.^(b)

ART. 11. Nothing in the foregoing article 10, contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one

(a) Act 14th April, 1802, sec. 2.

(b) Act March 22nd, 1816, sec. 1,—Act May 25th, 1824.

thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to article No. 3. Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the court admitting the applicant: otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.^(a)

ART. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parent's being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed.^(b)

ART. 13. Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents naturalization, were, if dwelling in the United States on the

(a) Act 22nd March, 1816, sec. 2.

(b) Campbell v. Gordon, 6 Cr. 76.—Act 14th April, 1802, sec. 4th

fourteenth of April, 1802, to be considered as citizens of the United States.^(a)

ART. 14. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath, or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.^(b)

ART. 15. Every court of record, in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.^(c)

ART. 16. No person who shall arrive in the United States after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States.^(d)

ART. 7. The oath of naturalization when taken, confers the rights of a citizen. It is not necessary that there should

(a) Campbell v. Gordon, al. 6. Cr. 4, cl. 2.

177.

(c) Act April 14th, 1802, sec. 3.

(b) Act April 14th, 1802, sec. 1, con. (d) Act March 3d, 1813, sec. 12.

be an order of court admitting the alien to become a citizen.
(a) Nor that it should appear by the record of naturalization that all the requisites presented by law for the admission of aliens have been complied with.(b)

ART. 18. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.(c)

(a) Campbell v. Gordon, and al.
6, Cr. 176.

7, Cr. 520.

(c) Con. art. 4, sec. 2.

(b) Stark v. Chesapeake Ins. com.

THE
REVISED LAWS
OF
INDIANA.

CHAPTER I.

An Act allowing and regulating the Writ of Ad Quod Damnum.

[APPROVED, DECEMBER 20, 1823.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That if any person, owning lands on one side of a water course, and the bed thereof, either by a legal or equitable title, and desiring to erect a dam across the same, for the purpose of building a water grist mill, saw mill, carding or fulling mill, or any other machinery to be propelled by water on such lands, and erect a dam across the same, shall not own the land on the opposite side thereof, against which he would abut his dam, he shall make application for a writ of *ad quod damnum* to the circuit court of the county where such lands may lie, which court shall thereupon order their clerk to issue such writ to be directed to the sheriff, commanding him to summon and empannel twelve fit persons to meet on the land so proposed for the abutment, on a certain day to be named by the court and inserted in said writ, of which day ten days previous notice to the proprietor thereof shall be given, if to be found in the county, and if not, then to his agent. if any he have in the county, or if no agent, to be advertised at the door of the court house of the proper county, for two terms.

Writ *ad quod damnum*, in what cases to issue.

Application, how to be made.

Jury to be summoned.

SEC. 2. The jury so summoned and empannelled shall be charged by the sheriff, impartially, and to the best of their skill and judgment, to view the land proposed for an abutment, and to locate and circumscribe by metes and bounds one acre thereof, having due regard therein to the interests of both parties, and to appraise the same according to its true value, to examine the land above and below, the pro-

Jury to view examine, &c.

perty of others, which may probably overflow, and say what damage it will be to the several proprietors, and whether the mansion house of any such proprietor or proprietors, or the offices, curtilages or gardens, thereunto immediately belonging, will be overflowed, to inquire whether and in what degree fish of passage, or ordinary navigation will be obstructed, whether by any and what means, such obstruction may be prevented, and whether in their opinion, the health of the neighbours will be annoyed by the stagnation of the waters.

Inquest to be returned to the next court &c.

Proceedings thereon.

SEC. 3. The inquest so made and sealed, by the said jurors, together with the writ, shall be returned by the sheriff to the next succeeding court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the land so located or found liable to damage, if they be to be found within the county where the lands so to be condemned or overflowed do lie; and if not, then to their agent, if any they have, to shew cause if any they have, why the party so applying should not have leave to build his said mill dam.

Writ how obtained after building mill.

Proceedings thereon.

SEC. 4. Where any person may have built a mill or other dam, whereby the water of any river, creek, run or spring may be rendered thereby stagnant, it may be lawful for any person interested therein, or who may be damaged by the overflowing of said water, to obtain a writ of *ad quod damnum*, in the same manner as is directed in case of persons wishing to build a new mill, and the jury so summoned shall ascertain the damage, which any individual may sustain, in consequence of the continuance of the said mill dam, and whether the said mill is of public utility, and after the jury aforesaid shall have made their return, it shall be the duty of the owner or owners of the said mill to pay to any and every individual the sum assessed by the jury aforesaid; and upon payment of said assessment, the said owner or owners shall be clear of all damages to the person interested as aforesaid, any law, usage or custom to the contrary notwithstanding.

Application where made, if lands are divided by a stream.

SEC. 5. In like manner, if the person proposing to build such mill and dam, shall own the land on both sides of the stream, application shall be made, to the court aforesaid of the county where the mill house will stand, for a writ to examine as aforesaid what lands may be overflowed, and to make the same examination and report, as in the case last mentioned, which writ shall be directed, executed and returned as prescribed in the former case.

Duty of the court, on return of the writ.

SEC. 6. If on such inquest or other evidence, it shall appear to the court, that the mansion house of any proprietor, curtilage or garden thereunto immediately belonging, will be overflowed, or the health of the neighborhood annoyed,

they shall not give leave to build such mill and dam; but if none of those injuries are likely to accrue, they are then to proceed to adjudge whether, all circumstances weighed, it be reasonable, that such leave be given, or not given accordingly.

SEC. 7. And if the party applying shall obtain leave to build the said mill and dam, he shall, upon paying, respectively, to the several proprietors entitled, the value of the acre so located, and the damages, which the jurors find will be by overflowing the lands above and below, become seized in fee simple of the said acre of land; but if he shall not within one year thereafter begin to build the said mill, and finish the same within three years, and afterwards continue it in good repair for public use, or in case the said mill and dam be destroyed, if he shall not begin to rebuild it within one year after such destruction, and finish it within three years thereafter, the said acre of land shall revert to the former proprietor and his heirs, unless at the time of such destruction, the owner thereof be a feme covert, infant, imprisoned, or of unsound mind, in which case, the same time shall be allowed after such disability be removed.

Applicant to pay damages.

Begin to build within 1 year.

SEC. 8. The inquest of the said jurors nevertheless, or opinion of the court, shall not bar any prosecution or action, which any person would have had in law, had this act never been made, other than for such injuries, as were actually foreseen and estimated by the jury.

Proceedings under this writ, not to bar action for injuries not estimated.

SEC. 9. That all laws and parts of laws heretofore in force, in this state, regulating the writ of *ad quod damnum*, be and the same are hereby repealed.

CHAPTER II.

An Act for the incorporation of Agricultural Societies.

[APPROVED, JANUARY 22, 1829.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That hereafter when any twenty or more citizens of any county, shall see proper to meet at their county seat in conformity to this act, it shall be lawful for them to organize themselves and become an agricultural society, with corporate and politic powers.

Twenty citizens may incorporate.

SEC. 2. Public notice shall be given by advertisements signed by at least three freeholders of the county, and put up at three public places in said county, three weeks previous to said meeting, or published three weeks in a newspaper printed in the county, of the intended meeting, set-

Notice to be given.

ting forth that the object thereof is the formation of an agricultural society under the provisions of this act.

SEC. 3. When twenty or more citizens of any county shall have so met at the county seat, it shall be lawful for them to choose by voice, a chairman and secretary for said meeting, who shall be sworn or affirmed faithfully to discharge their respective duties as chairman and secretary of such meeting, and then to proceed to take a vote whether they will or will not incorporate themselves under the provisions of this act, and if there be twenty present who so agree, they shall forthwith hold an election by ballot for officers, at which election the chairman and secretary shall officiate as judges.

SEC. 4. The officers of each society, shall be a president, and vice-president, treasurer, secretary and seven directors, and such subordinate officers as the president and directors shall from time to time appoint, for the purpose of determining between competitors for prizes and awarding the same.

SEC. 5. The treasurer shall give bond in such sum, and with such freehold security as the president and directors may approve, conditioned for the payment of all monies entrusted to him, to such person or persons as may be by law entitled to the same, and for the faithful discharge of his duty as treasurer; which bond shall be recorded in the recorder's office of the county, and filed in the office of the clerk of the circuit court of the county.

SEC. 6. Before any election is held for officers at the first meeting, it shall be determined by voice, what shall be the tax for the first year on each member, and at every annual meeting the amount of the succeeding yearly tax shall be determined by voice; which shall never exceed five dollars, or be less than one dollar, in any year on each member.

SEC. 7. So soon as a certificate signed by the chairman and secretary, that a meeting and election of a president, vice-president, secretary, treasurer and seven directors, has been had in conformity to this act, is recorded in the recorder's office (whose duty it shall be to record the same for a fee of twelve and a half cents,) they and their successors, shall be in law and in fact, a body corporate and politic, to have continuance forever, by the name and style of the agricultural society of _____ county. And by such corporate name and style, shall be forever able and capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, complaints, pleas, causes, matters, and demands of whatever kind and nature they may be, in as full and effectual a manner as any per-

Officers to be
chosen.

Officers of the
society.

Treasurer to
give bond.

Tax to be as-
sessed.

Society when
organized to
be a body cor-
porate and
politic.

son or persons, bodies corporate and politic, may or can do.

SEC. 8. Said president and directors shall have power to make and alter by-laws, (a majority being necessary to form a quorum) to determine on what articles, animals, mode of husbandry, or other improvements of any kind connected with agriculture or domestic mechanism, they will confer prizes, and the amount thereof, to fix the days of exhibition, to fill vacancies in their own body, or in any office pertaining to the society between the times of holding annual elections, to provide for the admission of other members, to direct by a by-law the mode of holding future elections, of the time and place of which election there shall be at least ten days notice by advertisement in three public places in the county: *Provided*, No by-law shall be contrary to the laws of this state.

May make by-laws and confer prizes.

Shall fix the days of exhibitions. Fill vacancies.

Give notice of elections.

SEC. 9. Said president and directors shall have a common seal, with which they shall seal all their official acts, which seal they may alter and revoke at pleasure, and institute another instead thereof.

Shall have a common seal.

SEC. 10. Such corporation may receive donations of land or other property for the use of said society: *Provided*, That no such corporation shall hold any greater amount of real estate than the value of five hundred dollars, for any greater length of time than six months.

May receive donations.

SEC. 11. The president, or in his absence the vice-president, shall preside at the meetings of the directors, and have a casting vote on all questions, and in case of absence of both of those officers, the directors at any meeting may choose a president pro tem. from their own body.

Presiding officer and his powers.

SEC. 12. No money shall be appropriated for any other purpose than the payment of prizes, that relate to agriculture and domestic manufactures, and for publications on the same subjects, and the necessary contingent expenses of the society.

Money not to be appropriated except as a prize.

SEC. 13. Nothing in this act shall be so construed as to prevent any member of any agricultural society from withdrawing therefrom, on his giving notice thereof to the treasurer, and paying up all dues.

Members may withdraw.

This act to take effect and be in force from and after its passage.

CHAPTER III.

An Act authorizing Aliens and Foreigners to hold Real Estate within the state of Indiana.

[APPROVED, JANUARY 14, 1818.]

Aliens may
purchase real
estate.

Declaration
of intention to
become a citi-
zen.

Be it enacted by the General Assembly of the state of Indiana, That it shall and may be lawful for any foreigner or foreigners, alien or aliens, who are not the subject or subjects of, or in any wise owing allegiance to any prince, potentate or power, or foreign state, which is or shall be at the time of making the purchase herein permitted and allowed, at war with the United States of America, to purchase lands, tenements, and hereditaments within this state, and to have and hold the same, to them, their heirs, assigns, and legal representatives forever, as fully and to all intents and purposes as any natural born citizen may or could do: *Provided,* That such alien or aliens shall, previous to making such purchase, manifest by his, her, or their declaration, made according to the laws of the United States, his, her, or their bona fide intention of becoming a citizen of the United States: *And provided also,* That nothing herein contained, shall be so construed or taken as to contravene any law of the United States, that is now or may be hereafter in force relative to aliens and foreigners.

CHAPTER IV.

An Act respecting Apprentices.

[APPROVED, JANUARY 7, 1831.]

Subjects,
manner and
term of ap-
prenticeship.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person within the age of twenty-one years, who now is, or may hereafter be bound, by an indenture of his or her own free will and accord, or by and with the consent of the father, or in case of the death of the father, by and with the consent of the mother or guardian of the person so bound, which consent shall be signified by the signing and sealing of such indenture, by such parent or guardian, and not otherwise, to serve as an apprentice in any art, craft, trade, mystery or employment, until such person so bound, shall arrive, if a female to the age of eighteen, and if a male, to the age of twenty-one years, or for any shorter period, (as the case may be) such person so bound shall serve accordingly.

SEC. 2. If any master or mistress, or any other person,

under the order or direction of such master or mistress, shall grossly misuse or ill-treat any apprentice, on complaint being made thereof, on oath, before any justice of the peace of the proper county, not akin to either party, (provided such justice shall deem it expedient to administer such oath,) by such apprentice, or any other person in his or her behalf, setting forth the specific act of misuse or ill-treatment complained of, such justice shall issue a summons, against such master or mistress, to appear and answer said complaint; and if such master or mistress, after being duly served with such summons, shall neglect or refuse to attend and answer as aforesaid, such justice shall thereupon issue his warrant against such master or mistress, and cause him or her, to be forthwith brought before him, and shall thereupon recognize him or her, to appear before the circuit court of the proper county, at its next term, to answer such complaint; at which time the said court shall proceed in a summary way, to hear such complaint, and order a discharge of such apprentice, or a return to the service of his or her master; and in case such apprentice shall be discharged, the clerk of the circuit court aforesaid, shall give such apprentice a certificate thereof, and the decision of such court shall in all cases be final between the parties.

Mode of redress for misusing apprentice.

Master to be summoned & recognised.

C. court to make summary order.

SEC. 3. Any and every contract or voluntary enlistment, hereafter entered into, by any apprentice, during the period of his or her apprenticeship, shall be and the same is hereby declared null and void.

Apprentice's contracts void

SEC. 4. It shall and may be lawful, in case any apprentice shall desert the service of his or her master or mistress, for such master or mistress, to advertise such apprentice, in any public newspaper, offering a reward for the apprehending and bringing back the said apprentice; and in case such apprentice, leaving the service of his master or mistress, shall openly run at large, it shall be the duty of any justice of the peace of the county, on application of such master or mistress, to issue a warrant, directed to a constable or other civil officer, to bring the body of such apprentice, forthwith before him; upon the production whereof, to order him or her, to return into the service of his or her master or mistress, and upon refusal of such apprentice so to do, to commit him or her to the jail of the proper county, there to remain until he or she shall consent: *Provided however*, That such apprentice may appeal to the next circuit court, by entering into a recognizance with sufficient security, to appear and abide the decision of said court; which said court shall hear and determine the same, according to the provisions of the second section of this act.

Master may reclaim absconding apprentice.

J. P. may issue warrant vs. apprentice & make order &c.

Appeal from order of J. .

Apprentice to
remunerate
for lost time.

SEC. 5. All time wilfully lost by any apprentice, shall be by him or her, returned day for day, to his or her master or mistress, at the expiration of his or her term of service, and all reasonable costs and charges incurred in apprehending and regaining any apprentice, shall be paid by him or her, upon the expiration of his or her apprenticeship.

Recognizances.

SEC. 6. All recognizances taken by virtue of this act, shall be taken in the name of, and made payable to the state of Indiana, in any reasonable amount, at the discretion of the justice of the peace taking the same.

Jury trial in
C. court.

SEC. 7. On the trial of any appeal, or cause removed by recognizance into the circuit court, authorized by this act, the trial of the matters of fact in issue, shall at the request of either the master or mistress, (as the case may be) or of the apprentice, be submitted to a jury, who by their verdict, shall find whether such apprentice shall be discharged from such service and apprenticeship or not, and the court shall give judgment thereon accordingly.

All acts and parts of acts, heretofore in force concerning apprentices, are hereby repealed.

CHAPTER V.

An Act authorizing and regulating Arbitrations.

[APPROVED, JANUARY 29, 1818.]

What cases
may be arbitrated.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all persons who shall or may have any controversy or controversies, for which there is no other remedy but by personal action, or by suit in equity, and who are desirous of settling or terminating the same, may agree to submit the said controversy or controversies, to the umpirage or arbitration of any person or persons to be by them mutually chosen for that purpose, and that their submission may be made a rule of any court of record within this state.

Parties to enter into bond.

SEC. 2. When any person or persons have agreed to submit any matter or matters, in controversy between them, to umpirage or arbitration as aforesaid, and that the said submission may be made a rule of court, they shall enter into arbitration bonds, under their hands and seals, duly executed and delivered, with conditions for the faithful performance of the award or umpirage; which condition shall set forth the name or names of the umpire or arbitrators, and the matter or matters submitted to his or their determination, and shall also expressly state their agreement that the

submission may be made a rule of any court of record within this state, or may be made a rule of such particular court as they may name or point out in their submission; and when the umpire or arbitrators is or are appointed, and the arbitration bonds duly executed and delivered as aforesaid, either party may appoint a time and place for the umpire or arbitrators to attend or meet, of which he shall give written notice to the opposite party, and to the umpire or arbitrators, at least ten days before the time appointed for such meeting; and when the umpire or arbitrators shall be ready to proceed to the business to which he or they shall have been appointed, the parties may proceed to exhibit their proofs, and the umpire or arbitrators shall have power to adjourn from time to time, until he is prepared to make his umpirage, or they are prepared to make their award, provided the same be made up within the time stipulated in the submission.

Time & place
of meeting.

SEC. 3. The parties shall have the benefit of legal process to compel the attendance of witnesses, which process shall be issued by the clerk of the circuit court of that county, and shall be returnable before the umpire or arbitrators on a day certain, and any person or persons disobeying such process, shall be deemed guilty of contempt of the court out of which the same issued, and shall be subject to the same penalties and forfeitures, as are provided for disobeying writs of subpœna in other cases, and the costs of such witnesses shall be taxed by the umpire or arbitrators, according to the provisions contained in the law, ascertaining the fees of witnesses; which costs, together with the sum hereinafter allowed to the umpire or arbitrators, shall be made a part of the rule of court, and all witnesses examined by the umpire or arbitrators, shall be under oath, unless otherwise agreed to by the parties.

Cl'k to issue
subpœnas.

Costs of witnesses, by
whom taxed.

SEC. 4. The award or final determination of the umpire or arbitrators, made agreeably to this act, shall be drawn up in writing and shall be signed by him or them, or so many of them as may agree thereunto, and a true copy of the said award or umpirage shall, within fifteen days thereafter, be delivered by the umpire or arbitrators, to each of the parties, or left at his, her, or their usual place of abode; and if either of the parties shall refuse or neglect to obey the said award or umpirage, the other party may return the same, together with the submission or arbitration bond, to the court named in the submission, or if no court be named in the submission, then to the circuit court of the county in which the parties reside; the submission or award, so returned, shall be entered on record and filed by the clerk, and a rule thereupon made, that the person or persons against whom such award or umpirage is to operate, shew

Award to be
in writing, &
copies delivered
to the parties.

Award where
filed.

How confirmed,
& how set
aside.

cause at that or the next succeeding court, why the said award or umpirage should not be made the judgment of the said court; and if the party should fail to appear, having had ten days previous notice, or appearing, should not shew in the opinion of the court, sufficient cause, the court shall then proceed to enter judgment thereupon; which judgment shall have the same force and effect, and operation as judgment in other cases: *Provided always*, That before any rule of court is made thereon, the party moving for such rule, shall produce to the court satisfactory proof of the due execution of the submission or arbitration bond, also that the party refusing or neglecting to obey the award or umpirage, hath been furnished with a true copy thereof as aforesaid; and provided further, that the party shewing cause why the award or umpirage should not be made the judgment of the court, shall be at liberty to produce before the court any evidence that he can, to shew that the said award or umpirage was obtained by mistake, in matter of law or fact, or that the same was obtained by corrupt or other undue means, and in either case, the said award or umpirage shall be annulled and set aside at the costs of the party presenting the same.

SEC. 5. In all cases where an award or umpirage shall be presented to any court of record within this state, for a judgment to be entered thereon, whether the reference shall have been made by rule of court or otherwise, it shall be the duty of the court to which the same shall be presented as aforesaid, to hear any evidence of either party, whether to invalidate or support the same, and to set aside or enter judgment on the said award or umpirage, as to said court may seem just.

Allowance to
arbitrators.

SEC. 6. The umpire or arbitrators shall be entitled to receive each, the sum of one dollar per day for each and every day necessarily employed in performing the duties of their appointment.

An award on
mutual ac-
counts to have
the same va-
lidity as a
verdict.

SEC. 7. In all cases when the plaintiff and defendant having accounts to produce one against another, shall by themselves, attornies, or agents, consent to a rule of court, referring the adjustment thereof to certain persons mutually chosen by them in open court, the award or report of such referees being made according to the submission of the parties, and approved of by the court, and entered upon the record or roll, shall have the same effect and be deemed and taken to be as available in law, as a verdict given by twelve men; and the party to whom any sum or sums of money are thereby awarded to be paid, shall have judgment on *scire facias* for the recovery thereof, as the case may require.

This act to take effect and be in force from and after its publication.

CHAPTER VI.

An Act authorizing domestic attachments, and regulating the proceedings thereon.

[APPROVED, JANUARY 19, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever any person shall so abscond or conceal himself, herself, or themselves, that the usual process of law cannot be served upon him, her, or them, it shall and may be lawful for any creditor or creditors, his, her, or their agent or attorney of such person or persons, who shall so abscond or conceal himself, herself, or themselves, to appear before any clerk of the circuit court, or justice of the peace, and make oath to the facts or circumstances, in the form following, to wit: A. B. of the county aforesaid, solemnly swears, or affirms, as the case may be, that C. D. late of said county, is justly indebted to him the said A. B. in the sum of _____ by (here state the nature of the debt or contract) and that the said C. D. so conceals himself, herself, or themselves, that the ordinary process of law cannot be served upon him, her, or them; and upon filing such affidavit legally attested or authenticated, with any justice of the peace, or clerk of the circuit court, and also his bond, with security, in double the sum demanded, payable to the defendant, and conditioned for the due prosecution of his writ of attachment, and the payment of all damages that may be sustained by the defendant, if his proceedings thereon shall be wrongful and oppressive, the sufficiency of which bond and security shall be determined by such justice or clerk, it shall be the duty of such justice or clerk to issue a writ of domestic attachment, under his hand and seal of office, subject to such regulations and mode of proceeding, as is hereinafter prescribed.

Attachment,
when and how
to issue.

Form of oath.

Bond.

SEC. 2. Each and every justice of the peace, before whom such affidavit and bond shall be filed, is hereby authorized and required to issue a writ of domestic attachment, under his hand and seal, directed to any constable of the proper county, commanding him to seize and take into his possession, the goods, chattels, rights, credits, monies, and effects of the said defendant that may be found in his county, and make return of the said writ, and his proceedings thereon, within twenty days.

Jurisdiction
of justice of
the peace,
when and how
issued by jus-
tice of the
peace.

Return of at-
tachment.

SEC. 3. The constable to whom the said writ of attachment is directed, shall take to his assistance one credible householder of the county, and on the discovery of any goods, chattels, rights, credits, monies or effects, of the defendant or defendants, named in the said writ, shall declare that he attaches the same, at the suit of the plaintiff or plaintiffs; and with the assistance of said householder, shall make

How executed
by constable.

Inventory of goods attached. an inventory of the property so attached, and the estimated value thereof, which shall be signed by the constable and the person assisting him, and returned with the writ; and such writ when served, according to the provisions of this act, shall bind the property from the time of service.

Notice of pendency of suit, how given by J. P. SEC. 4. Such writ being returned executed, the justice shall advertise the issuing of the writ, the proceedings thereon, and the time and place at which he will proceed to hear and decide upon the same, which notice shall be published three weeks successively, in some newspaper printed in the county, or written notices thereof set up the same length of time, in three of the most public places in the county, one of which shall be at the court house door; and if the defendant does not appear on the day set for trial, the justice shall proceed to hear the allegations and proofs of the plaintiff, and render judgment for such sum as shall appear to be due, and award execution thereon, against the property attached, or so much thereof as may be sufficient to satisfy the debt and costs.

Justice to render judgment.

Appeal from justices' judgment. SEC. 5. All judgments rendered under this act, by any justice of the peace, may be taken up by appeal to the circuit court, as in other cases.

Lands, how attached.

SEC. 6. Whenever the plaintiff's demand shall exceed the jurisdiction of the justice of the peace, or there shall not be sufficient goods and chattels of the defendant to satisfy his demand, and he shall wish to proceed against the lands of the defendant, he may file his affidavit and bond, as required in this act, in the office of the clerk of the county where the lands are situated; and it shall be the duty of such clerk to issue a writ of domestic attachment, under his official seal, directed to the sheriff of the county, and commanding him to attach the lands and tenements, and seize and take into his possession, the goods, chattels, rights, credits, monies and effects of the defendant or defendants named in the writ, that may be found in his county, and make return of the writ within twenty days, together with his proceedings thereon.

When Clerk shall issue writ.

Duty of sheriff.

SEC. 7. The sheriff to whom the writ of attachment is directed, shall proceed in the same manner, to levy and return the same, as is prescribed to the constable, by the third section of this act, and such writ when so levied, shall constitute a lien upon the lands, and bind the personal property from the time of service.

Lien from time of levy.

Suit docketed by clerk.

SEC. 8. Whenever the writ shall be returned executed, it shall be the duty of the clerk, to docket the cause, for the second day of the ensuing term of the circuit court, and forthwith make out a notice of the pendency of said writ, requiring the defendant to appear and defend, or the same will be heard and determined in his absence; which notice,

Notice of pendency in circuit court.

the plaintiff shall cause to be published, four weeks successively, in some public newspaper, published in the county, or if there be no paper published in the county he shall cause the same to be published in the paper nearest thereto: *Provided*, that if there be no lands attached, and there be no paper published in the county, it shall be sufficient to publish the same by setting up written notices in three of the most public places in the county, one of which shall be at the court house door.

SEC. 9. At the ensuing term of the court, if the defendant does not appear, upon proof that publication has been made at least ten days before the first day of the term, the court shall proceed to hear and determine upon the claim of the plaintiff, and render judgment for the amount that appears to be due, and award execution thereon, against the property attached; but if publication has not been made as required by the foregoing section, the cause shall stand continued until the next term.

SEC. 10. In all cases arising under this act, where the defendant shall appear and enter special bail, as in other cases, on the day of trial, he shall have the same privilege of pleading and making his defence, as if such suit had been commenced by summons or *capias*, and when the sum in controversy shall exceed twenty dollars, such trial may be by jury as in other cases.

SEC. 11. In all cases where any person or persons, other than the defendant, may claim any personal property attached under the provisions of this act, the officer attaching the same, shall previous to any further proceeding on such writ, cause the right of such property to be tried as in cases of property taken in execution, and the officer shall give such claimant reasonable time to procure testimony to substantiate his said claim: and if the right of property shall be found in such claimant, the officer shall forthwith release from his custody such property, and the plaintiff shall pay the costs of such trial; but if the right of property be found in the defendant or defendants in such writ of attachment, the claimant shall pay the costs, and it shall be the duty of the justice who issued the attachment, or of the circuit court before which the writ is returnable, to tax the same: *Provided*, that in all cases the party thinking himself, herself, or themselves aggrieved, shall have the right of appeal from the verdict of such jury; subject however when such appeal shall be taken from a justice, to the law regulating appeals from proceedings of justices of the peace, and in all cases where an appeal shall be taken from the verdict of such jury, the person or persons claiming such property and in whose possession it may be, shall be at liberty, upon giving bond and sufficient security, in a reasonable sum, to be ap-

Proviso.

Judgment when to be given in circuit court.

Continuance.

Proceedings where S. bail is entered.

Jury trial.

Claim of goods attached how tried.

Costs on claim of property how taxed.

Appeal from trial of right of property.

Bond in case of appeal.

Suit on forfeited bond.

proved of by the officer serving such attachment, to hold such property until such appeal shall be determined; and on failure to deliver such property agreeably to the true intent and meaning of such bond, the said bond may be put in suit by the plaintiff in attachment, who shall recover thereon all damages by him sustained.

Garnishee, when and how summoned.

SEC. 12. Whenever any creditor, or his agent or attorney, in his or her behalf, shall make and file his affidavit with the justice or clerk issuing such attachment, that he has good reason to believe, that any person, naming such person, has property of any description in his, her, or their possession, belonging to the attachment defendant; or that he, she, or they, are indebted to the defendant, by bond, bill, note, account or other contract, and the officer cannot come at the property of the defendant in their possession, it shall be the duty of the clerk or justice, to issue his summons to such person as garnishee, notifying him to appear within five days, if issued by a justice of the peace, or at the ensuing term, if issued by a clerk of the circuit court, there to answer under oath or affirmation, all questions that shall be put to him, her or them, touching the rights, property or credits, of the defendant or defendants, in his, her or their hands, or within his, her or their knowledge; which summons with a copy of the original writ of attachment, and the affidavit against the said garnishee, shall be served, by leaving them with him or them, or at their usual place of residence. And from the day of such service, such garnishee shall stand and be accountable to the plaintiff or plaintiffs in attachment, for the amount of the money, property or credits, in his, her or their hands, or due and owing from him, her or them, to the defendant or defendants in attachment.

Requisites of notice to garnishee.

Garnishee's responsibility to plaintiff.

Continuance of suit vs. garnishee.

Costs when in favour of garnishee.

SEC. 13. The suit instituted against such garnishee, shall be continued without any further proceedings therein, until the action against the defendant in attachment be determined; and if on the trial of such action, nothing shall be found due from the defendant to the plaintiff, the garnishee shall recover costs of the plaintiff; and if in such suit against the garnishee, the plaintiff shall be non-suited, the cause discontinued, or judgment rendered against him, her or them, the garnishee shall recover costs. And if the plaintiff shall recover judgment against the defendant in attachment, and the garnishee shall deliver up to the sheriff or constable, before judgment had against him, her or them, or shall produce an inventory of all the goods and chattels, or other effects in his, her or their possession, and shall pay to such officer, all monies due from him, her or them to the said defendant, then the costs which shall have accrued on such suit against the garnishee, shall be paid

Costs when to

out of the proceeds of the property attached, and belonging to the defendant: but if he shall not appear, or if appearing, shall refuse truly to confess the matter alleged, and on trial the plaintiff shall recover judgment against him, or if he admits that he has monies, credits or effects, belonging to the defendant in his hands, and shall fail or refuse to pay or deliver the same to the officer, such garnishee shall pay costs: *Provided however*, That no garnishee shall in any case be compelled to pay money, or to perform any contract, to or for any plaintiff in attachment, in any other way or manner, or at any other time, than he would be lawfully bound to do for the defendant in attachment.

SEC. 14. If any plaintiff or plaintiffs, his, her or their agent or attorney, will make oath or affirmation, before the clerk or justice issuing this writ, that he, she or they, is or are afraid that said garnishee will abscond before judgment can be had, and that he, she or they, verily believe that such garnishee hath monies, goods, chattels or effects of the said defendant, in his possession, or is indebted to the said defendant, it shall be lawful for the clerk or justice, to issue a *capias* against the said garnishee, and hold him to bail thereon, as in other civil cases.

SEC. 15. Each and every creditor of the defendant, upon making and filing his affidavit and bond, as is required by the first section of this act, shall at any time before the final adjustment of the suit, be permitted to file and prove his, her or their claim or demand, against the defendant or defendants.

SEC. 16. Upon the trial of the suit in attachment, if the plaintiff or plaintiffs, creditor or creditors, shall make sufficient proof of the debts due him, her or them, from such defendant, and also of the goods, chattels, rights, credits, monies and effects, in the possession of the garnishee, the court or justice shall proceed to give judgment thereon, in favor of the plaintiff or creditors, either against the garnishee, or the effects of the defendant, as the case may require.

SEC. 17. If upon the trial before a justice of the peace, the sum proven by any one creditor shall exceed the justice's jurisdiction, such justice shall forthwith certify his proceedings, and transmit the same with all the papers filed before him, and belonging to the cause, to the clerk of the circuit court of the proper county, who shall file the same and docket the cause for trial at the next term, and the court shall proceed therein, in the same manner, as if the writ had originally issued from said court.

SEC. 18. Whenever this writ shall be returned, it shall be the duty of the court or justice, to examine into, and adjust all accounts and demands of the plaintiff or credi-

be paid out of property attached.

Costs when to be paid by garnishee.

Proviso.

When garnishee may be held to bail.

Claim filed, how and when proved.

Final judgment vs. def't. or garnishee.

When J. P. may certify suit to circuit court.

Proceedings thereon.

Accts. how adjusted and paid.

- tors of the defendant, upon due proof to the court; and upon the sale of the property, the officer shall, under the direction of the court, after paying all costs and charges, pay to the several creditors, the amount of their several claims as adjusted, and if there is not a sufficiency to pay the whole sums due, it shall be the duty of the court or justice, to direct the payment of the several creditors, in proportion to their several demands. And in all cases arising under this act, the usual fees and allowances shall be made; and in all cases where monies and effects cannot be found sufficient to satisfy the legal costs of the proceeding, then the costs shall be paid by the plaintiff and creditors in proportion to their several demands adjusted as aforesaid.
- Fees, &c. how paid.** SEC. 19. The plaintiff in any writ of attachment, shall not be permitted to discontinue the same, after any other creditor has regularly filed his claim and bond, before the court or justice issuing the writ, without the consent of, or satisfaction being made to such creditor.
- Plaintiff may not discontinue.** SEC. 20. Stay of execution on judgments rendered under the provisions of this act, shall be subject to the same law as is provided in other cases.
- Stay of execution.** SEC. 21. When goods shall be attached in the hands of a consignee, such consignee shall have a lien on such goods for any debt due to him or her from the consignor, in preference to any plaintiff or creditor.
- Lien of consignee.** SEC. 22. All writs of attachment issued by the circuit court, shall supersede proceedings under attachments issued by a justice of the peace, undetermined at the time of serving such writ; and the officer serving the writ issued by the circuit court, may take into his possession any property of the same defendant, attached by a constable under a writ from a justice of the peace; and upon his taking such property into his possession, it shall be his duty to serve the justice with a copy of the writ issued by the court; and the justice shall thereupon transmit to the clerk of the said court, a certified copy of his proceedings, and the original papers filed before him appertaining to the cause, and the circuit court shall proceed to the final adjustment of the several claims filed before the justice, in the same manner as if they had been originally filed in said court, and tax up the legal costs that accrued before said justice, which shall be paid as the other costs are paid, and the constable shall be released from all liability when property is taken from his possession, by virtue of a writ of attachment from the circuit court.
- Attachments from circuit court supersede justice's.** SEC. 23. No writ of attachment shall issue against any person or persons, by virtue of this act, while the family of such person shall be and remain. bona fide, settled within such county, if such absconding debtor or debtors shall not
- Justice's duty when superseded.**
- Circuit court to render judgment.**
- Constable not liable in a superseded case.**
- Attachment prohibited where def't. is bona fide settled, &c.**

continue absent more than one year after the time that he, she, or they, may have abandoned his, her or their family as aforesaid; unless an attempt be made to conceal such person's absence from his, her, or their creditors, or unless such person shall be secretly removing to evade the payment of his, her, or their debt or debts. Exceptions.

SEC. 24. If any person shall be about to abscond, to the injury of his creditor on the sabbath day, on oath being made thereof by such creditor, it shall be lawful for the clerk of the circuit court, or any justice of the peace of the proper county, to issue a writ of attachment on said day, under the same restrictions and regulations as are prescribed in the first section of this act; and the sheriff or constable, shall proceed on said sabbath day, to attach the goods and chattels of the defendant, as in other cases provided for. Attachment may issue on the Sabbath.

SEC. 25. Each and every person who may think himself, herself, or themselves aggrieved by the issuing of a writ of attachment, under the provisions of this act, shall be entitled to an action on the bond filed as aforesaid; and if on the trial, it shall appear to the satisfaction of the jury, that such proceedings had against the defendant or defendants were wrongful and oppressive, then the person aggrieved shall recover damages at the discretion of the jury. Suit, where writ is wrongfully issued.

SEC. 26. In all cases where a writ of attachment may be depending, in a circuit court, and the defendant may be desirous in the vacation thereof, to have his property released, the sheriff or other officer, having the same in possession, shall deliver to him the property upon his entering into a recognizance of special bail, with security to the satisfaction of the clerk, which recognizance shall be taken and acknowledged before the clerk and endorsed on the writ, and the said clerk shall be held responsible for the sufficiency of the security. Special bail may be given in vacation.

SEC. 27. In all suits in the name of and for the use of the state of Indiana, or in the name of any person or persons as trustee of the state, and for the use of the state, if the process issued shall be returned that any defendant in such process is not found, it shall be the duty of the attorney prosecuting any such suit, if he shall deem it advisable so to do, to have a writ of domestic attachment issued against the goods, chattels, lands, and tenements, rights, credits, and effects of such absent defendant, to answer said demand, without making any affidavit or giving and filing any bond, and such writ of attachment when so issued shall be served and prosecuted to final judgment, according to the provisions of this act. Clerk's responsibility.

State may have attachment without oath or bond.

CHAPTER VII.

An Act relative to Foreign Attachments.

[APPROVED, JANUARY 20, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the lands, tenements, hereditaments, goods, chattels, rights, credits, monies, and effects of any and all persons, not residents in this state, are and shall be liable for the payment of debts or other demands by suit, to be instituted by process of foreign attachment, to be issued from the circuit court having jurisdiction of the subject matter: and where the estate, property, or interest to be attached, exists or is situate in different counties, the jurisdiction of the circuit court shall extend to such counties, and sundry writs may be issued and executed in such counties, and the joint and several estates, property, and interest of joint owners, either as partners or otherwise, shall be liable as aforesaid, by suit against all or any of them who may be indebted, by their proper names, or the names by which they may be known and reputed, or by the partnership name or style; and the estates, property, and interest, which may have descended to non-resident heirs or devisees, or become vested in the non-resident executor or administrator of decedents, shall be liable in like manner, for debts or other demands against such decedent's estates: *Provided however*, that the property, estate, or interest of any one or more joint owners, who shall not be indebted, shall not be affected by the proceedings authorized by this act, against joint owners who may be indebted.

SEC. 2. Before any writ of attachment shall issue by virtue of this act, the nature of the debt or demand certain, and the sum claimed, shall be proved by oath or affirmation, to be justly due and owing, and that the defendant, whether the original debtor, or whether sued in a representative capacity, is not, as the person making the oath or affirmation verily believes, at the time, a resident of this state; and bond shall be given as in cases of domestic attachment, with security to be approved of by the clerk of the court issuing the writ; and said oath or affirmation, and bond, shall be filed in the office of such clerk.

SEC. 3. The officer serving such writ, shall proceed in the same manner, and be subject to the same responsibilities, as are prescribed in cases of domestic attachment.

SEC. 4. Immediately after the return of the writ executed, the clerk shall make out a notice of the pendency of the writ, which notice the plaintiff shall cause to be published for three weeks successively, in a newspaper published in the county, in which such suit is depending, or the most con-

Nonresident's
property li-
able to attach-
ment.

Jurisdiction
of the court.

Property of
joint owners.

Of non-resi-
dent heirs, &c.

Proviso.

Statement of
demand.

Oath.

Bond.

Officer to pro-
ceed as in do-
mestic attach-
ment.

Return of
writ, and no-
tice of pen-
dency of suit,

venient thereto, if no newspaper be there published; and the suit shall be continued for two successive terms, after publication be made and proved, before the court shall proceed to adjudicate thereon, and their proceedings in such adjudication, to final judgment, shall then be similar, in all respects, to the proceedings in domestic attachment, except where otherwise herein directed: *Provided however*, that if the defendant shall at any time appear and enter into a recognizance of special bail with the clerk, or during the term of the court, as is directed in cases of domestic attachment, the property attached may be released, and the cause proceed to issue, trial and judgment, according to the practice of the court in common law cases.

Continuance
two terms.

Proceedings

Special bail.

SEC. 5. The court may direct the sale of personal chattels of a perishable nature, which may be seized under this act, to be made by the sheriff at public auction, upon reasonable notice, and the money arising from such sale, shall be deposited with the clerk, subject to the order of the court upon final judgment. In all cases where any property is attached, that is liable to immediate damage, it shall be lawful for the officer attaching the same, to make sale of such property by giving ten days notice.

Court may
order sale of
chattels.

Notice of sale
&c.

Sales without
order.

SEC. 6. Creditors, other than the plaintiff, shall be permitted to file and prove their claims, by filing the affidavit and bond, as required in the second section of this act; but no creditor or plaintiff, who may have prosecuted a claim under the provisions of this act, and obtains judgment therefor in the absence of the defendant, shall receive the amount of such judgment, or any share thereof, until he first give bond, with security, to be approved of by the court or clerk, in double the value to be received, payable to the defendant, conditioned that the creditor receiving the same, shall appear and answer to any suit which such defendant may bring against him, within twelve months thence next ensuing, and to pay to such defendant, all sums of money, which on trial to be had thereon, shall appear to have been received by such creditor, and which was not justly due and owing to such creditor, together with all interest and costs of suit.

Other credi-
tors may file
claims.

Creditor to
give bond.

SEC. 7. It shall be lawful for any plaintiff in foreign attachment, to summon as garnishee, any person who may have any goods, chattels, monies, rights, credits, or effects, in his hands, belonging to such absent defendant, or to the estate on account of which he is sued; or to summon any person who may be indebted in any manner whatsoever, to such absent defendant, or to the estate on account of which he is sued, in the same manner, and subject to the same rules and restrictions, as are prescribed in proceedings by domes-

Garnishee
may be sum-
moned as in
case of domes-
tic attach-
ment.

tic attachment, and the parties and the court, shall be governed by the like rules in all respects, where the same are not repugnant to this act.

CHAPTER VIII.

An Act regulating the admission and practice of Attornies and Counsellors at Law.

[APPROVED, JANUARY 31, 1824.]

License, how
obtained.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That no person shall be permitted to practice as an attorney and counsellor at law, or to commence, conduct, or defend any action, suit, or plaint, in which he is not a party concerned, in any court of record within this state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose, from any two of the judges of the supreme court, or from two circuit judges, agreeably to the laws of this state; which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all superior and inferior courts of record in this state, if the license be given by the said judges of the supreme court, and in all the circuit and inferior courts of record in this state, if the license be given by the circuit judges of this state; and to appear and practice as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behaviour in the said practice, and to demand and receive all such fees as are or may hereafter be established, for any service which he shall or may do, as an attorney and counsellor at law.

Certificate of
good moral
character.

SEC. 2. No person shall be entitled to receive a license as aforesaid, until he hath obtained a certificate from the court of some county of his good moral character.

Names of at-
tornies enroll-
ed by clerk of
supreme court

SEC. 3. It shall be the duty of the clerk of the supreme court, to make and keep a roll or record on good paper, stating at the head or commencement thereof, that the persons, whose names are thereon written, have been regularly licensed and admitted to practice as attornies and counsellors at law within this state, and that they have duly taken the oath to support the constitution of the United States, and such other oaths, as may be and are required by law, which shall be certified and endorsed on the said license.

SEC. 4. And no person whose name is not subscribed or written on the said roll, with the day and year, when the same was subscribed thereto or written thereon, shall be suf-

ferred or admitted to practice, as an attorney or counsellor at law, under the penalty herein after mentioned, any thing in this law to the contrary notwithstanding: and the judges of the supreme court, in open court, shall have power to strike the name of any attorney or counsellor at law from the rolls for misconduct in his office: *Provided always*, that every attorney before his name is struck off the roll, shall receive a written notice, from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him; and he shall, after such notice be heard in his defence, and be allowed reasonable time to collect and prepare testimony for his justification: and every attorney, whose name shall, at any time, be struck off the rolls by order of the court, in manner aforesaid, shall be considered as though his name had never been written thereon, until such time, as the said judges, in open court, shall authorize him again to subscribe the same.

Judges may
strike from
the roll, &c.

SEC. 5. The judges of the supreme court, and the judges of the several circuit courts, shall have power to punish in a summary way, according to the rules of law and the usages of courts, any and every attorney and counsellor at law, who shall be guilty of any contempt in the execution of his office; and every attorney and counsellor at law receiving money for the use of his client, and refusing to pay the same over when demanded, may be proceeded against in a summary way, by motion; and all attorneys and counsellors at law, judges, clerks, and sheriffs, and all other officers of the several courts, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against, in the same manner, as other persons are, except in such cases, and at such times, as they may be privileged by statute from arrest.

Judges may
punish attor-
nies for con-
tempt.

SEC. 6. No person shall be permitted to prosecute as an attorney or counsellor at law, by instituting, defending, or conducting any action, plaint, suit, or plea, in any court whatever, who holds a commission as a judge of the supreme or circuit courts, or any person, who holds a commission of sheriff or coroner, or who acts as a deputy sheriff, jailor or constable, be permitted to practice as an attorney or counsellor at law, in the county in which he has been commissioned or appointed; nor shall any clerk of the supreme or circuit courts, be permitted to practice as attorneys or counsellors at law in the court of which he is clerk; and no person shall be permitted or suffered to enter his name upon the roll or record, to be kept as aforesaid, by the clerk of the supreme court, or to do any official act appertaining to the office of an attorney or counsellor at law, until he hath taken an oath to support the constitution of the United States, and the constitution of this state, an oath of office,

Judges may
not practice,
&c.

Attorney,
take oath.

and such other oaths as may be required by the laws of the state; and the person administering such oath, shall certify the same on the back of the license, which certificate shall be a sufficient voucher to the clerk of the supreme court, to enter or insert, or permit to be entered or inserted, on the roll of attorneys and counsellors at law, the name of the person, of whom such certificate is made.

Oath.

SEC. 7. The following oath of office shall be administered to every attorney and counsellor at law, before they subscribe the respective rolls, to wit: I swear or affirm, that I will, in all things faithfully execute the duties of an attorney at law, or duties of counsellor at law, as the case may be, according to the best of my understanding and abilities.

Attornies
from other
states admit-
ted on exami-
nation.

SEC. 8. Any person producing a license, or other satisfactory voucher, proving that he has been regularly admitted an attorney at law, in any court of record within the United States, and that he is of good moral character, may be admitted to an examination for the degree of an attorney and counsellor at law; and any attorney and counsellor at law residing in any of the United States, who is of good moral character, may, at any time, on application, be admitted to an examination for the degree of an attorney and counsellor at law, within this state.

Fees, how re-
covered back.

SEC. 9. If any person or persons, not licensed as aforesaid, shall receive any money or other species of property, as a fee or compensation for services rendered or to be rendered by him or them, as attorney or attorneys, counsellor or counsellors at law, all monies, so received, may be recovered back, with costs of suit, by an action or actions, for money had and received, and property delivered or conveyed for the purpose aforesaid, or the value thereof may be recovered back, with costs of suit, by the person delivering or conveying the same, by an action of detinue or trover and conversion; and the person or persons receiving such money or property, shall forfeit threefold the amount or value thereof, to be recovered with costs of suit, before any magistrate, if within a magistrate's jurisdiction; but if not, before any court of record by action of debt or quitam, the one half to the use of the person who may sue for the same, and the other half to the use of the county in which such suit shall be brought; and if any person or persons shall sign, or cause to be assigned, the name of an attorney, or either of the judges of the supreme court, to any certificate or license provided for by this act, with intent to deceive, such person or persons shall be deemed guilty of forgery, and may be prosecuted and punished accordingly.

Forfeiture.

Suitors may
appear in
court without
attornies.

SEC. 10. Plaintiffs shall have the privileges of prosecuting, and defendants the privilege of defending in their proper persons; and nothing herein contained shall be so con-

strued, as to debar them therefrom; nor shall any thing herein contained be so construed, as to affect any person or persons, heretofore admitted to the degree of an attorney and counsellor at law, according to the rules of the former general court, so as to subject them to a further examination, or cause them to renew their license.

CHAPTER IX.

An Act supplemental to the act, entitled an act regulating the admission and practice of Attornies and Counsellors at Law; approved Jan. 31, 1824.

[APPROVED, DECEMBER 23, 1827.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That in all cases where any attorney or counsellor at law, shall have heretofore collected, or shall hereafter collect for his employer any money, and shall neglect or refuse to pay the same over, on being requested so to do, by any person authorized to receive the same, it shall and may be lawful for such person, his agent, or attorney, to file in the clerk's office of the circuit court where such collection was made, charges against such attorney and counsellor at law, setting forth therein the amount of money collected, and from whom the same was collected; and shall forthwith notify such attorney and counsellor at law, of his intention to file such charges: which said charges shall be filed as aforesaid, and notice thereof given as above directed, at least ten days before the sitting of the court before whom such charges are to be tried.

Attornies to be debarred for failing to pay over money collected.

SEC. 2. That if such court, on hearing the allegations and proofs submitted to them by the parties, shall be of opinion that such attorney and counsellor has collected money, as such attorney and counsellor, and, after reasonable request, had refused to pay the same over to the person authorized to receive the same, such court shall suspend such attorney or counsellor at law from the practice of law in any of the courts of this state, for any length of time in the discretion of said court: *Provided however,* that any succeeding circuit court holden in and for the county where such judgment of suspension shall have been entered up, may revoke the same, and reinstate such attorney or counsellor at law in all the privileges taken from him by such suspension: *And provided also,* that such attorney or counsellor at law shall be permitted to retain in his possession a reasonable fee for his services as such, together with all costs and charges by him expended for and on behalf of

May be restored.

his employer. Any attorney or counsellor at law having collected money, as aforesaid, and having refused to pay the same over to any person authorized to receive the same, within a reasonable time after request, shall pay to the person authorized to receive the same, ten per centum, in addition to the sum so collected and withheld as aforesaid.

CHAPTER X.

An Act to provide for the appointment of a Circuit Prosecutor, and defining his duties.

[APPROVED, JANUARY 20, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That there shall be a circuit prosecutor appointed in each judicial circuit in this state, who shall be chosen by a joint ballot of the senate and house of representatives, and shall hold his office for two years from and after his election.

SEC. 2. It shall be the duty of the circuit prosecutor, in each judicial circuit, to prosecute all pleas, complaints, indictments and presentments, and prosecute all suits against delinquent sheriffs, and collectors of the state and county revenue, and all other persons who now are, or may hereafter be indebted to the state, or any of the counties in their respective circuits, where the state or county may be a party, except in cases where complaint shall be made in the name of the state, for the benefit of some third person.

SEC. 3. And the said prosecutor, before he enters on the duties of his office, shall take an oath, which oath shall be administered by the president judge of the circuit for which he may be appointed, faithfully to discharge the duties of his office; which oath it shall be the duty of the president judge to administer and endorse on the back of the commission; and he shall moreover execute a bond with security, to be approved of by the president judge aforesaid, in the penalty of five thousand dollars, payable to the state of Indiana, conditioned for the faithful discharge of his duty as prescribed by law, and for the prompt payment of all sums of money that may come to his hands, by virtue of said office, to the person or persons authorized to receive the same; which bond it shall be the duty of the said president judge to take and forward to the office of the secretary of state, to be there filed; and suit may be brought on the same for delinquency and defalcation, as in case of other civil officers.

SEC. 4. That whenever a vacancy shall happen, by the

Prosecutors,
how elected.

Prosecutor's
duties.

Oath.

Bond.

Bond to be
forwarded to
secretary's
office.

death, resignation or removal from office, of the prosecutor in any circuit in this state, it shall be the duty of the governor, upon being notified of the same, to appoint some fit person to fill such vacancy until the next meeting of the general assembly.

Vacancy in office of prosecutor, how filled.

SEC. 5. Each prosecutor in this state, shall receive as a salary, the sum of one hundred and fifty dollars per annum, except the prosecutor of the fifth judicial circuit, who shall receive the sum of two hundred dollars per annum, payable quarterly.

Prosecutor's salary.

SEC. 6. The prosecutor of the fifth judicial circuit, shall be compelled to superintend and prosecute or defend, on the part of the state, all pleas whatsoever, that may be appealed or brought up by writ of error to the supreme court.

Duty of Prosecutor of 5th circuit.

CHAPTER XI.

An Act concerning the Auditor of Public Accounts and the Treasurer of State.

[APPROVED, JANUARY 7, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the auditor of public accounts, before entering upon the duties of his office, shall give bond with such security as shall be approved of by the governor, in the penal sum of ten thousand dollars, payable to the state of Indiana, conditioned for the true and faithful performance of the duties enjoined and required by law to be performed by such auditor, and for the safe delivery to his successor in office, of all books, vouchers and other effects, belonging to his office, the execution of which bond, being duly acknowledged before some person authorized to take the acknowledgment of deeds, it shall be deposited by the governor in the office of the secretary of state and there recorded.

Auditor's bond.

SEC. 2. The said auditor shall keep all accounts that may arise between this state and any other state or territory, and with the United States, or any individual, and shall keep fair, distinct, and clear accounts of all the revenues and expenditures of the state of every kind and nature whatever: all accounts between this state and the officers of government, entitled to receive from the treasury salaries or wages fixed by law: all accounts of the members of the general assembly, and of any person or persons having demands for money from the treasury, shall be rendered into the office of said auditor, where they shall, without delay, be liquidated, adjusted, and settled; and upon settlement of any such account, the said auditor shall, by war-

Duties.

warrant drawn on the treasurer of state, direct the payment of the amount due the party entitled to receive the same, and having entered such warrant in his books and filed and deposited the accounts and vouchers in his office, he shall deliver the warrant to the party in whose favour it is drawn: *Provided however*, That the auditor shall audit no account, nor give any certificate or warrant which would enable any person to receive any money, unless in cases particularly authorized by law.

Further
duties.

SEC. 3. The said auditor shall liquidate and adjust, the accounts of all public debtors, and of all collectors of any revenue or tax, levied by act of the general assembly, and payable into the treasury, and shall call upon such debtors or their representatives to render accounts at proper times, and discharge such balance as may be found due to the state, and upon their failure so to do, the said auditor shall take the most effectual steps for the speedy recovery of the same, and may employ attorneys for that purpose, and though it should appear on the trial that the defendant oweth no balance to the state, yet his having failed to render an account to the auditor, and to take from him his receipt, shall subject him to the payment of all costs incurred by such proceedings by the state.

Transfer of
books and pa-
pers to audi-
tor.

Penalty for
failure to de-
liver over
books, &c.

Auditor to de-
liver over
books, &c. to
treasurer.

How auditor's
books shall be
kept.

Letter book.

SEC. 4. Any person or persons whatever, having in his or their possession, any public books, papers, vouchers, or accounts, of any description, belonging or appertaining to the office of auditor of public accounts, are hereby authorized and required, to deliver the same to the auditor of this state, who is hereby authorized to receive the same, and any person or person refusing or neglecting when demanded to deliver up, on oath, to the auditor, all books, papers, vouchers and accounts as aforesaid, shall forfeit and pay not exceeding five hundred dollars, to be recovered by motion of the auditor, or by presentment or indictment, in any court of competent jurisdiction; and the said auditor shall, on demand, deliver up to the treasurer of state, who is hereby authorized to receive the same, all books, papers, accounts and vouchers which may come into his possession, which belong or appertain to the treasury department.

SEC. 5. The said auditor shall keep a book, in which shall be entered every warrant he draws on the treasury, in the order he issues them, in such manner as to shew the date, the name of the person in whose favour drawn, and the nature of the claim upon which it is founded, and shall carry such entry into a book of general accounts, under separate and distinct heads. He shall also keep a letter book, in which he shall register all letters by him written, relating to his official duties. He shall furnish the general assembly annually, during the first week of its session, and

as often as they may require, a statement or abstract of the public accounts generally, together with an account of all balances due to and from the state; and all the books, papers and transactions of his office, shall be open at all times to the inspection of a committee of the general assembly of either branch thereof, and also to the inspection of the governor.

Auditor shall report to general assembly.

SEC. 6. That said auditor shall immediately and annually hereafter, procure from the different land offices within the state, and from those which may hereafter be established, a complete register, catalogue and description, of each and every tract of land not already so registered and described, which has been or may be sold at such land offices, in such divisions as such land may have been sold, noting the whole number of acres in each division, subdivision, and tract either sold or unsold, particularly stating the date of the entry, and whether a final certificate or receipt has been given to the purchaser therefor or not, and also each vacant tract of land; and each tract of land which shall stand forfeited to the United States, and owned by the United States shall be considered vacant. And the said auditor is further required, to procure at the same time, from said land offices, a complete map of all said lands, on a scale of one inch to the mile, particularly shewing on its face, all the lands sold, donated or patented, as well as all the lands vacant.

Lists of lands sold by U. S. to be annually procured by auditor.

SEC. 7. The said auditor, on procuring such register's catalogues, descriptions, and maps, shall immediately and annually hereafter, on or before the first day of January, make out and forward to the clerks of the several circuit courts, of the different counties of this state, a copy of said register's catalogues, descriptions and maps of lands, contained in any such county, which when received by such clerk, shall be filed in his office.

Lists of lands to be forwarded to clerks annually.

SEC. 8. The salary of the auditor of public accounts, shall be four hundred dollars per annum, payable in quarterly payments, by warrants drawn on the treasurer, by the governor for that purpose, which salary shall commence on his entering upon the duties of his office.

Auditor's salary.

SEC. 9. *Be it further enacted*, That the treasurer of the state, before entering upon the duties of his office, shall give bond with such security as shall be approved of by the governor, in the penal sum of thirty thousand dollars, made payable to the state of Indiana, conditioned for the faithful performance of all duties enjoined, and required by law to be by him performed, for the faithful accounting for, and paying over, all monies that may be received by him from time to time, by virtue of his office, and for the safe delivery to his successor in office, of all books, monies, vouchers, accounts, and effects belonging to his said office;

Treasurer's bond.

which bond shall be executed, acknowledged, and recorded, in the same manner as is prescribed in the first section of this act, for the execution, acknowledgment, and recording of the bond to be given by the auditor.

Treasurer
shall receive
state revenue,
&c.

SEC. 10. The said treasurer is hereby authorized and required, to receive of the several collectors of public revenue, all taxes arising on lands or other property, and all other public money payable into the treasury, by virtue of any act or acts of the general assembly.

Treasurer's
books, how
kept.

SEC. 11. The treasurer shall keep in books provided for that purpose, correct accounts of all the money received by him from time to time, on the respective taxes and impositions, or from any other source, by virtue of any act or acts of assembly, also correct accounts of all sums of money by him paid out of the treasury, in pursuance of any such act or acts; which account shall be kept, so that the nett produce of the several and respective taxes and impositions, received into, and the money paid out of the treasury for every particular service, may appear separate and distinct from each other, and a full statement thereof, shall, by the treasurer, be laid before the general assembly annually, during the first week of its session, and as often as they may require the same; and the books, papers, and transactions of his office, shall at all times be open to the inspection of the governor, and also of a committee of the general assembly or of either branch thereof.

Treasurer
shall report to
general as-
sembly annu-
ally.

Vouchers to
debtors pay-
ing over mo-
ney, how gi-
ven.

SEC. 12. When any public debtor, shall hereafter pay any sum or sums of money into the public treasury, the treasurer, on receiving the same, shall forthwith make out a receipt for the amount, and carry the same to the auditor, who is hereby required to give to the treasurer his receipt therefor, and the treasurer shall deliver the said receipt to the person paying the money therein specified.

Treasurer's
monthly ac-
counts.

SEC. 13. The treasurer shall make out an account of all his payments, and of the warrants on which such payments were made, and shall deliver the same monthly, to the auditor, and a list of such payments and warrants, shall be made out by the auditor, in a book to be kept for that purpose.

Penalty on
Treasurer for
diverting on
misapplying
funds.

SEC. 14. If the treasurer shall divert or misapply, any money paid into the treasury, contrary to any act or acts of assembly, by which the same was raised or appropriated, the said treasurer, for such offence, shall forfeit his office, and be deemed incapable of holding any office of trust or profit whatever under the state, and shall moreover be liable to pay double the amount so misapplied, to be recovered by presentment or indictment in any court of competent jurisdiction, for the use of the state.

SEC. 15. There shall be a committee appointed by the

general assembly annually, to examine into the state of the offices of the treasurer and auditor of state, and the said treasurer is hereby required to lay before such committee all the accounts and vouchers of the treasury, for money received or paid out for any purpose whatever, and produce the money in his hands; and the committee shall make a fair statement, of all monies received and paid out of the treasury, and for what purposes, and the money on hand, and report the same to the general assembly, who shall cause such statements of the receipts and expenditures of the public money, to be attached to and published with the laws of every annual session of the general assembly. If the said committee shall discover that any money has been misapplied, they shall report the same to the general assembly, and in the examination of the auditor's books, papers and accounts, said committee shall mark (without defacing) all the treasurer's receipts which may be the foundation of a charge against him, in such of the auditor's accounts as are examined; in such manner as will shew that such receipts have been examined by said committee.

Committee shall examine treasurer's & auditor's offices annually.

Committee shall report.

Shall mark treasurer's receipts.

SEC. 16. That said treasurer, be required to record all returns of the commissioners of the seminary townships, to his office, and also to record all patents that may be issued for any of the lands sold in such townships, in a book to be kept for the purposes aforesaid.

Treasurer's duty as to seminary lands.

SEC. 17. The salary of the treasurer of this state, shall be four hundred dollars per annum, payable in quarterly payments, by warrants drawn in his favour, for that purpose, by the auditor of public accounts, which salary shall commence upon his entering upon the duties of his office.

Treasurer's salary.

SEC. 18. The quarterly allowances of all salary officers in this state, shall be made payable on the first days of March, June, September, and December, of each year, and when any such officer shall come into office between the times named in this section of the act, it shall be the duty of the auditor to audit, and the treasurer to pay such officer, such fractional quarter, up to the commencement of the next regular quarter; and when any officer shall go out of office, his account shall be audited and paid in like manner.

Salaries of state officers, when payable

CHAPTER XII.

An Act making Promissory Notes, Bonds, and Inland Bills of Exchange, negotiable and assignable.

[APPROVED, JANUARY 29, 1818.]

Be it enacted by the General Assembly of the state of Indiana,
That all notes, bills, bonds or other instruments of writing,

What notes, bills, bonds, &c. are assignable.

Assignee may sue in his own name.

Action vs. endorser.

Assignee to allow set off before notice to drawer, &c.

Notes payable at a chartered bank, negotiable in like manner as inland bills of exchange.

that shall hereafter be made, or have heretofore been made and signed by any person or persons, body politic or corporate, whereby such person or persons, body politic or corporate, promise to pay any sum of money, or acknowledge any sum of money to be due to any other person or persons, or for the delivery or payment of any specific article, or to convey any property, or perform any condition or conditions therein mentioned, shall be, and the same are hereby made assignable by endorsement thereon, under the hand or hands of such person or persons, body politic or corporate, to whom the same shall have or may be made due or payable; and in his, her or their assignee or assignees, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively; and such assignee or assignees may bring suit thereon in his, her or their own name or names, and recover against the person or persons, body politic or corporate, who have or shall make or sign the same, reserving to such drawer or drawers, obligor or obligors, all the equitable defence which he, she or they might or could make, and in the same manner as if the suit had been commenced by and in the name or names of the drawee or drawees, obligee or obligees; and such assignee or assignees may have their action or suit against him, her or them, who endorsed the same; (having used due diligence to obtain the money, article, property or condition from the maker or drawer thereof,) and in every such case, he, she or they so bringing suit, shall be entitled to recover damages and costs, if judgment be rendered in his, her or their favour: *Provided however*. That all such assignee or assignees shall allow all just set-offs, discounts and defence, not only against himself, but against the assignor, before notice of such assignment shall have been given to the defendant: *Provided also*. That all notes in writing negotiable and payable at any chartered bank within this state, made and assigned by any person or persons, body politic or corporate, whereby any such person or persons, body politic or corporate, doth or shall promise to pay to any other person or persons, body politic or corporate, his, her or their order, or unto bearer, any sum of money therein mentioned, shall by virtue thereof, be taken and construed to be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants; and that the payees or endorsees of every such note, payable to them or their order, shall and may maintain their action for such sum of money against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange: *And provided also*, That nothing in this preced-

ing proviso shall be so construed as to affect any promissory note, or other writing, unless the same shall be made negotiable and payable in the first instance, at some chartered bank in this state. Proviso.

CHAPTER XIII.

An Act regulating damages on protested Bills of Exchange.

[APPROVED, JANUARY 11, 1820.]

Whereas bills of exchange are accounted in all mercantile transactions as ready money, and it is expedient for the advancement of trade and commerce, that the credit of such bills should be preserved by making the same a sufficient security to the holder, and expedite a recovery thereupon, therefore: Preamble.

Be it enacted by the General Assembly of the state of Indiana, That when any bill of exchange shall be drawn for the payment of any sum of money, and such bill shall be legally protested for non-acceptance, or non-payment, the drawer or endorser shall be subject to the payment of fifteen per cent. damages thereon, if drawn on any person or persons living without the jurisdiction of the United States; and ten per cent. damages thereon, if drawn on any person or persons residing within the jurisdiction of the United States, and without the jurisdiction of this state; and the bill shall in all cases bear an interest of six per centum per annum, from the date of the protest for non-payment, until the money therein drawn for shall be fully satisfied and paid: *Provided*, Nothing herein contained shall be so construed as to entitle any banking company, to any more or greater interest, than at the rate of six per centum per annum on any note which may have been discounted by such bank, and which may afterwards have been protested for non-payment: *Provided also*. That nothing in this act shall be so construed as to subject the drawer or endorser of a bill of exchange to any other damages than the costs of protest for non-acceptance, if the bill of exchange be paid by the drawer when the bill arrives at maturity. Drawer or endorser of bills of exchange, subject to 15 per cent. damages, if drawn on persons out of the U. S.

Bill to bear interest.

Proviso.

Proviso.

CHAPTER XIV.

An Act authorizing the Seizure of Boats and other Vessels for Debt.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That boats and vessels of all descriptions, built,

Boats liable, &c. repaired and equipped within the jurisdiction of this state, shall be liable for all debts contracted, by the master, owner or consignee thereof, on account of work done, supplies or materials furnished by mechanics, tradesmen or others, for, on account of, or towards the building, repairing, fitting, furnishing or equipping such boats or vessels; and the debts so contracted, shall be a lien on such boats or vessels, their tackle, apparel and furniture; and shall have preference to any and all other debts due from the owners, except mariners and boatmen's wages.

Proceedings. SEC. 2. That any person having a demand contracted as before mentioned, against any such boat or vessel, may have a warrant, to be issued by any justice of the peace, judge or court, having jurisdiction within the county in which such boat or vessel may be, authorizing and directing the seizure and detention of the same, with the tackle and apparel, by the sheriff or constable, upon affidavit made of the truth and justice of the demand, to be left with the officer or court issuing such warrant, and such attachment, if the demand be within the jurisdiction of a justice, shall be returnable to the justice who issued it, otherwise the same shall be returnable to the circuit court of the county.

Declaration. SEC. 3. That upon the return of such warrant, all persons having demands, of the description before mentioned, may join in a declaration against such boat or vessel, briefly setting forth their demands for work done or materials furnished, and whether at the request of the master, owner or consignee of such boat or vessel, and averring demand and refusal of payment, to which declaration shall be annexed the particulars of the demands, and proceedings shall be had, and judgment rendered as in other cases; and if in any case, all the demands exhibited before any justice of the peace, before judgment rendered by him, upon any such warrant, issued by and returned before him, shall exceed the extent of his jurisdiction, he shall certify the proceedings to the circuit court of his county, where the same proceedings shall be had thereon, as if originally returned into said court.

Proceedings, when certified to the circuit court. SEC. 4. That mariners and boatmen for their wages, may proceed under the provisions of this act, and shall be entitled to all the benefits thereof.

Owner may give bond and have the boat discharged. SEC. 5. That if the master, owner or consignee, shall before final judgment, give bond with security to be approved of by the clerk, justice or judge who may have issued such warrant, under which any boat or vessel may be seized or detained as aforesaid, conditioned to satisfy and pay all the demands pending against the same, which shall be adjudged to be due and owing, on the determination thereof, or pay

the said demands together with the costs of the proceedings, such boat or vessel shall thereupon be discharged from such arrest and detention.

CHAPTER XV.

An Act concerning Clerks.

[APPROVED, JANUARY 20, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the clerk of the supreme court, shall reside and keep his office at the seat of government; and the clerks of the several circuit courts shall severally keep their offices open, each and every day in the year, (Sundays and the fourth of July excepted) from the hours of nine o'clock A. M. until three o'clock P. M., during which time they are severally required to give due attendance, either in person or by deputy, and at all other times within reasonable hours, when thereto required by any person having business to transact in any of said offices; and the clerks of the supreme and circuit courts shall procure, for the use of their respective offices, all the necessary books, well bound, one of which shall be kept as a complete record book, in which they shall severally record, at full length, all cases necessary to be recorded, and shall make up the records of each term, on or before the first day of the next succeeding term. The said clerks shall, with every execution they may severally issue, make out and deliver to the officer with the same, a detailed bill of all the costs due on such execution, to be by said officer delivered to the party against whom the said execution may issue, upon his, her or their replevying or paying the same, together with his certificate thereon, that the said execution was so replevied or paid.

Clerk of Sup.
court to keep
office at seat
of governm't.

Office hours of
clerks of C.
court.

Books and re-
cords, how
kept.

Fee bills when
to be issued.

SEC. 2. The clerks of the supreme and circuit courts, are hereby authorized, by themselves or deputies, to administer all oaths which may become necessary, in the discharge of their several duties; and the said clerks shall, in all cases, be held responsible for the official acts of their deputies.

Clerks may
administer
oaths.

Responsible
for deputies.

SEC. 3. That the clerks of the circuit courts, of the several counties within this state, shall enter on their dockets, transcripts of judgments obtained before justices of the peace of their proper county, for the fee of twenty-five cents; which transcript the justice shall deliver to any

Justices'
transcripts
how filed, and
lien on lands.

Fi. fa. not to
issue on justi-
ces' transcript
until scire fa-
cias &c.

plaintiff, his agent or attorney, who may apply for the same, which judgments from the time of such entries on the order book of such circuit court, shall bind the real estate of such defendant or defendants; but no fieri facias shall be issued by such clerk, until a certificate shall be first produced, from the justice before whom the original judgment was obtained, stating therein, that an execution has issued to the proper constable, as directed by law, and a return thereon, that no goods or chattels could be found, sufficient to satisfy said judgment: *Provided also*, That no such writ of fieri facias, shall be issued by such clerk, until a summons or scire facias shall issue against such defendant or defendants, notifying him, her or them, to appear before the circuit court of the proper county, to shew cause if any, why a writ of fieri facias, or execution, should not issue on said judgment.

Oath of clerk
of Sup. court.

SEC. 4. The clerk of the supreme court, before entering upon the duties of his office, shall take an oath of office, similar to that provided by law to be administered to the judges of the supreme court, before one of the judges of said court, and shall also give bond to the state of Indiana, in the penalty of five thousand dollars, with at least two sureties, to be approved of by said court, conditioned for the faithful discharge of the duties of his office; which bond shall be recorded in the said court, and filed in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit, from time to time, at the instance and for the benefit of any party injured, until the whole penalty shall be recovered thereon.

Bond of cl'k.
of Sup. court.

Bond where
recorded and
filed.

Oath of clerks
of C. court.

SEC. 5. The clerk of the circuit court, before entering upon the duties of his office, shall take an oath or affirmation, similar to that required to be taken by the clerk of the supreme court; a certificate of which shall be endorsed on his commission, and a copy thereof filed in his office, and shall also give bond, payable to the state of Indiana, in the penalty of two thousand five hundred dollars with two or more sureties, to be approved of by the associate judges of the proper county, conditioned for the faithful discharge of the duties of his said office, and seasonably to record all decrees, judgments and orders of the said court, and also to pay over all monies which shall or may come into his hands, for the payment or in discharge of any judgment, order, or decree of said court, or in any other manner, by virtue of his office, to such person or persons as shall by law have a right to demand and receive the same, and to do and perform all other acts which may be required of him by law. The said bond shall be recorded in the recorder's office of the proper county, within twenty days after its execution, and a certified copy thereof by the re-

Bond of cl'k.
of C. court.

Bond where
recorded.

order, shall in all cases be deemed equivalent in evidence, or on profert, to the original; and shall also be spread upon the records of said court, and the original filed among the papers thereof, and shall not be void on the first recovery, but may be put in suit at the instance and for the benefit of any party injured, from time to time, as often as the condition thereof may be broken.

Copy of bond
to be evidence

SEC. 6. In all chancery cases, which may be transferred from the circuit to the supreme court, by reason of the prejudice or interest of the presiding judge of such circuit court, it shall be the duty of the clerk of the circuit court, on application of either party, to deliver over the papers on file in said cause, in his office, together with a complete record of the proceedings, in said cause, in order that the same may be transmitted to the clerk of the supreme court, to be by him docketed in the same manner as other causes: *Provided*, the party so applying, shall give bond in such sum as either of the associate judges of the said court shall deem sufficient, payable to the opposite party, for the safe transmission of such papers.

Chancery
causes, how
certified up to
supreme court

Proviso
that bond be
given by party
taking up.

SEC. 7. Whenever it shall happen that there are no associate judges in any county, commissioned and qualified to act, it shall be lawful for the clerk of the circuit court, to approve of the security, and take the necessary bonds, of sheriffs and coroners; and such bonds, when so taken, by any such clerk, shall have all the force and effect of bonds taken by associate judges, in similar cases, and shall be disposed of in the same manner.

Clerk shall
approve of
bonds of she-
riffs, &c.
where there
are no judges.

SEC. 8. The clerk of the supreme court, shall carefully preserve the transcripts of records certified to said court, with the bonds for prosecution, and all papers relative to them, and other cases pending in said court, docketing them in the order in which he may receive them, that they may be heard in the same order, unless otherwise directed by the court.

Clerk of sup.
court shall
preserve pa-
pers.

Shall docket
causes in or-
der.

SEC. 9. The proceedings of the supreme and circuit courts, of each day during term time, shall be drawn up at full length, by the clerks thereof, and when any cause shall be finally determined, the clerk of the court in which the same was determined, shall make out a complete record thereof.

Proceedings
of Sup. & C.
courts to be
drawn up, &c.
Complete re-
cord by clerk
of C. court.

SEC. 10. That whenever any person shall request the clerk of the supreme court of this state, to record any deed of conveyance, or other evidence in writing, affecting the title of real estate, it shall be his duty to record the same in his office: *Provided however*, that the said clerk shall not admit to record, any deed of conveyance, or other evidence in writing, affecting the title of real estate, unless a certificate of the recorder of the proper county, where such deed

Clerk of Sup.
court may re-
cord convey-
ances of land,
&c.

Proviso
not unless
certified by
recorder.

Nor unless acknowledged.
Conveyances so recorded evidence.

of conveyance, or other evidence in writing, has been recorded, in pursuance of the laws of this state, shall accompany such deed of conveyance, or other evidence in writing, under his hand and seal, nor unless the same shall have been duly acknowledged according to law. Such deeds of conveyance, or other evidence in writing, affecting the title of real estate, so authorized to be recorded by the clerk of the supreme court, shall be taken and received in evidence, in all courts of record in this state, in the same manner, and under the same restrictions, as the records of the several recorders of the counties in this state.

Clerks of C. court to lay before county boards a statement of seminary fund.

SEC. 11. It shall be the duty of the clerks of the circuit courts, in their several counties, to lay before the grand juries, and the boards doing county business in said counties, at the last session in each year of said court and board, a statement in writing, exhibiting, as near as may be, the situation of the seminary funds in their several counties, which shall be spread upon the record of the proceedings of said board at such session.

Clerks pro tem. how appointed.

SEC. 12. Whenever there is no clerk of the circuit court, in any organized county, or the clerk shall resign, die, or be removed from office, it shall be the duty of the proper court, to appoint a clerk pro tempore, and if such vacancy shall happen in vacation, the judges of said court, or a majority of them, (or the president judge alone if the associate judges should not attend) shall meet as soon as practicable thereafter, and proceed to fill such vacancy; and the person so appointed; shall continue in office, until a clerk shall be duly elected and qualified, and shall immediately thereon take an oath or affirmation of office, and enter into bond with approved security, as in other cases.

Clerks to remove office to fire proof building, when erected.

SEC. 13. Whenever the board doing county business, in any of the counties of this state, shall have erected for the use of their proper county, a fire proof building, it shall be the duty of the clerk of the circuit court thereof, forthwith to deposit in said building, all papers, books, and records, appertaining to his said office.

Clerks shall be allowed for record books, &c.

SEC. 14. In all cases, where any clerk of the circuit court, shall have necessarily purchased record books, for the use and benefit of his office, he shall present his account therefor, to the board doing county business, and the amount of such purchase, shall be allowed him by said board, if reasonable.

Clerks shall report jury fees collected, &c.

SEC. 15. It shall be the duty of the clerks of the several circuit courts, semi-annually, on the first Mondays in January and July, to make from the returns of the executive and ministerial officers of their respective counties, a detailed statement of all jury fees collected during the last half year, and deliver the same forthwith, to the treasurer of their re-

spective counties, and said clerks, in making such return, shall also make return of all such jury fees which may have been collected, since the 12th day of February, 1825, and which may have been overlooked and not returned.

CHAPTER XVI.

An Act for the formation of Congressional Districts, and for the election of Senators and Representatives in Congress.

[APPROVED, JANUARY 7, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That when the term of any senator in congress is about to expire, it shall be the duty of the general assembly, at their session last preceding the term of service of such senator, to elect by joint ballot of both houses, on such day and at such place as they may agree upon, a suitable person to serve as a senator, from this state, to the congress of the United States, for the next succeeding six years; but no person shall be considered elected, unless he shall receive a number of votes equal to a majority of all the voters present.

Senators to congress, how elected.

SEC. 2. In all such elections, the president of the senate shall preside: there shall be two tellers, one to be appointed by the president of the senate, and one by the speaker of the house of representatives in their houses respectively, before they meet to conduct such election; notice of which appointments shall be given to each house respectively, when made by such messenger as the president of the senate, and speaker of the house of representatives may direct; and in voting, each member shall be called alphabetically, beginning with the senators; and when voting, it shall be the duty of the secretary of the senate, and clerk of the house of representatives, to attend and take down the name of each person voting; also a tally of the votes received by each person voted for, as the tellers read the tickets; which tally papers they shall compare after the votes are counted out, and if they agree, they shall jointly sign each of them, and hand them to the president of the senate, who, together with the speaker of the house of representatives, shall examine them; and if any one person is elected, he shall, by the president of the senate, be proclaimed duly elected to serve as a senator of this state in the senate of the United States, for the term of six years from and after the third day of March, next succeeding such election; but if no person should be elected, they shall

Elections of senators, how conducted.
Tellers.

Members, how called.
Duty of clerks of the houses.

President and speaker's duty.

President shall proclaim the election.

President
may adjourn
houses.

President
and speaker
to give certifi-
cate of elec-
tion.

Governor
to certify.

Vacancies of
senator, how
filled by gene-
ral assembly.
By governor.

1st congres-
sional district
for represen-
tative.

2nd congres-
sional district.

3rd congres-
sional district.

Representa-
tives, when to
be elected.

continue to ballot, again, and again, until some person is elected: *Provided however*. If after five ballotings, there should be no election, the president of the senate may adjourn such election, to some future day during the session.

SEC. 3. It shall be the duty of the president of the senate, and the speaker of the house of representatives, to certify to the governor, the person elected, whose duty it shall be to give the person so elected, a certificate of his election, under his hand and the seal of state.

SEC. 4. Senators to fill vacancies that may happen in the senate of the United States, shall be elected as herein before directed in this act; and when any vacancy shall happen during the recess of the general assembly, the governor shall appoint a person to fill such vacancy until superseded by a person elected as heretofore directed.

SEC. 5. That the counties of Orange, Perry, Spencer, Warrick, Vanderburgh, Posey, Gibson, Pike, Dubois, Knox, Daviess, Martin, Sullivan, Vigo, Parke, Monroe, Lawrence, Greene, Owen, Morgan, Clay, Putnam, Vermillion, Hendricks, Montgomery, Tippecanoe, Clinton, Fountain, Warren, and Carroll, shall compose one congressional district, and shall be known and designated as the first congressional district of the state of Indiana, and shall be entitled to one representative in the congress of the United States.

SEC. 6. The counties of Jefferson, Clark, Jackson, Washington, Harrison, Crawford, Floyd, Scott, Bartholomew, Jennings, Marion, Hamilton, Johnson, Shelby, Madison, Hancock, Boon, Cass, St. Joseph, and Elkhart, shall compose one congressional district, and shall be known and designated as the second congressional district of the state of Indiana, and shall be entitled to one representative in the congress of the United States.

SEC. 7. The counties of Henry, Rush, Decatur, Randolph, Wayne, Franklin, Fayette, Dearborn, Union, Switzerland, Ripley, Allen, and Delaware, shall compose one congressional district, and shall be known and designated as the third congressional district of Indiana, and shall be entitled to one representative in the congress of the United States.

SEC. 8. That the election of such number of representatives from this state, to the twenty-second congress of the United States, as the same may be entitled to, shall be holden on the first Monday in August eighteen hundred and thirty-one, and representatives to each succeeding congress, shall be elected biennially thereafter.

CHAPTER XVII.

An Act authorizing the appointment of Constables, and defining their duties.

[APPROVED, JANUARY 17, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the qualified voters, residing within the several townships of the counties of this state, shall meet together, at the usual places of holding general township elections, on the first Monday in April next, and annually on the first Monday of April thereafter, for the purpose of electing as many constables in each township, as there are justices of the peace within the same, and the persons so elected, shall continue in office, by virtue of such election, for the term of one year, and until their successors shall be elected and qualified, but nothing herein contained, shall compel them to serve longer than three months, after the expiration of the term of one year.

Constables to be elected 1st Monday in April annually.

Term of office

SEC. 2. It shall be the duty of the inspectors of elections, in each township, within three days after such election, to make out and deliver to the clerk of the circuit court, a list of the several constables elected, whose duty it shall be to make out certificates of the election of the person or persons so elected, and the sheriff of said county shall deliver the same to the constables elected.

Inspectors to give certificates of election to clerk.

Clerk to certify.

SEC. 3. Every constable, before he enters upon the duties of his office, shall take an oath or affirmation, before some competent authority, to support the constitution of the United States, and that of this state, and faithfully to discharge his duty as such constable during his continuance in office, according to the best of his skill and ability; and the officer administering such oath, shall make out a certificate thereof, and cause it to be filed in the clerk's office of the proper county.

Constable's oath.

SEC. 4. Every constable, before taking the oath aforesaid, shall execute a bond, with at least two freeholders of the proper county as his securities, to the acceptance of the board doing county business, payable to the state of Indiana, in a penal sum of not less than three hundred, nor more than two thousand dollars, to be determined by the board doing county business; which bond may in vacation be taken by the clerk of the court, who is hereby authorized to approve of the sufficiency of the security, the board fixing the amount of the bond, conditioned for the safe keeping and paying over, to the proper person or authority, of any and all monies which may be collected or received by him, or otherwise come into his hands, by virtue of his office, and for the due, honest and faithful discharge and performance of all and singular, his duties as such constable, during

Constable's bond.

Bond may be approved by clerk.

Condition of bond.

Bond to be filed with clerk, &c. his continuance in office, as such, in all things agreeably to law; which bond shall be filed with the clerk of the board doing county business, of the proper county, for the benefit of all persons who may be injured or damnified by the malfeasance, mis-feasance, or non-feasance of such constable.

Vacancies, how filled. SEC. 5. Whenever a vacancy in the office of constable shall happen in any township, by death, removal, resignation, disqualification, or by any cause, the board doing county business of the proper county, shall, at their next session, appoint a suitable person or persons to fill such vacancy, until the next annual election for constables, and until a successor be appointed, and qualified; and the constable so appointed shall take a like oath and give a like bond, as above required, in other cases; also any justice of the peace may appoint a constable or constables, for a special purpose, in either a civil or criminal case, whenever such appointment may become necessary, by reason of the sickness or absence of the regular constable or constables, or in any other emergency rendering such special appointment in the opinion of such justice absolutely necessary; and the constable thus specially appointed shall if required by such justice, take the oath and execute bond as above required.

Special appointment of constable.

Constable's duty as to suppressing riots, &c.

SEC. 6. It shall be the duty of every constable, to apprehend on view, or on warrant, and bring to justice, all felons and disturbers of the peace, and violaters of the criminal laws of this state, to suppress all riots, affrays and unlawful assemblies, and in other respects generally, to keep the peace in his proper county, and to serve and execute all warrants, writs, precepts, and other process to him directed, or delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable. In discharging his duty in any respect whatever, constables may call to their aid, the power of the county, or such assistance as may be necessary.

Constables may call posse comitatus.

Process, how endorsed.

SEC. 7. Each and every constable shall on the receipt of any writ, precept, or other process (subpœnas excepted) note thereon the time of receiving the same, and shall also note on any writ, precept or other process, (subpœnas included) the time and manner of serving or executing the same, and shall make due return at the proper time and place, of all writs, precepts, subpœnas, or other process, whether served or not served.

Constable shall attend trials before J. P. keep order, &c.

Penalty for neglect, how assessed.

SEC. 8. Each and every constable, shall attend before the proper justice, on the return day of process, keep order in the justice's court, and execute all lawful commands of the justice, under pain of a fine not exceeding three dollars, for each neglect or refusal, to be assessed by such justice or some other justice of the proper county, against such constable; but no such fine shall be assessed, until such consta-

ble shall be informed or notified of the complaint or charge, and have an opportunity of being heard in his defence; and in such cases when it is not in his power to produce disinterested testimony, his own oath may be received, and considered; and all constables shall be ministerial officers in justices courts, in their respective townships, in civil cases, and in their respective counties in criminal cases.

SEC. 9. Whenever the surety or sureties to the bond of any constable shall die, remove or become insolvent, or insufficient, and complaint thereof in writing be made to the board doing county business, of the proper county, it shall be the duty of such board, on ten days notice in writing of such complaint being given to such constable, and his securities, if living in the county, either before or after the making of such complaint, to inquire into such complaint, and if satisfied of the truth of such complaint, to require such constable to give other and sufficient security, by bond, as aforesaid; and the proper board doing county business, shall have power, whenever in their opinion the public good or the interest of individuals shall demand it, to require any constable, on notice as aforesaid, to give further or additional security, by bond as aforesaid; but in neither of the above cases, shall the original bond or securities, be thereby discharged or affected; and in either case, any constable neglecting, failing, or refusing, to give such additional or further security, agreeably to the order or requisition of such board, shall be dismissed from office, and another appointed in his stead.

Further security, when to be exacted from const.

Original bond to stand.

Constable may be removed, &c.

SEC. 10. In serving all process, in either civil or criminal cases, and in doing his duties generally, when not otherwise provided for, the authority of a constable shall extend throughout the whole county, in which he may be appointed; and in case of the escape, absconding or flight of offenders, or persons charged in criminal or state cases, the constable may pursue and take or re-capture the escaping, absconding or fleeing person, any where in this state, and convey him back to the proper county, to be dealt with according to law: *Provided*, That when any constable shall pursue any person escaping, or fleeing from arrest, or legal custody, from one county into another, such constable shall go before some justice of the county, in which such fugitive may be, or be supposed to be, and make oath that the process was issued in the county from which such fugitive shall have escaped or fled, or that such fugitive has escaped from legal custody in the last named county, and that he is in pursuit of such fugitive; and when such oath shall be made, such justice, when a warrant or other process is produced to him, shall endorse his name thereon as such justice, or in case of other escape from custody and

General powers of constables.

Proviso as to escapes and fugitives to other counties

pursuit, shall issue his warrant to such constable, authorizing and commanding him, to seize such fugitive, and retake him to the county from which he may have escaped or fled, which endorsement or new warrant, shall give such constable full authority to make such arrest, or re-capture, as he would have in his own proper county.

Constable's sales when and where to be made.

Notice of sale

Constables may not purchase justice's judgments, nor property sold by constables.

Bonds for delivery of property, how taken.

Condition of delivery bond and to whom payable.

Constable's responsibility as to delivery bonds.

Forfeited delivery bond, how disposed of.

SEC. 11. All sales of property made by any constable, by virtue of his office, under any law of this state, shall unless otherwise specially directed by law, be made between the hours of ten o'clock A. M. and four o'clock P. M. at the dwelling house, or on the premises where such property shall be seized or taken, or some public place in the township, where the same shall be seized or taken, and shall be as public as the nature of the case will permit. At least ten days previous notice of the time and place of such sale shall be given by the constable, by manuscript advertisements set up in three public places, in the township where such sale is to be held.

SEC. 12. It shall not be lawful for any constable, directly or indirectly, to purchase any judgment or part thereof, on the docket of any justice in the township where such constable resides, or to receive a transfer or assignment thereof; nor shall it be lawful for any constable, directly or indirectly, to purchase any property offered for sale by him, as such constable; and all purchases, assignments, and transfers of judgments, or parts thereof, and all purchases of property made, accepted or received by any constable, contrary to, or in violation of the spirit and meaning of this section, and all contracts and agreements, touching or growing out of the same, shall be and are hereby declared utterly null and void, and shall be considered as mal-feasance on the part of such constable.

SEC. 13. It shall and may be lawful for any constable, having in his hands any execution requiring a sale of property, seized or levied on, by virtue thereof, to take bond with sufficient security, from the judgment debtor, if tendered, for the delivery of such property at the time and place of sale, as advertised, which shall be stated in the condition of the bond, in as good condition as the same may be in, at the date of the bond, which bond shall be payable to the judgment creditor, and in double the amount due on the execution; and the constable taking the bond, shall be held responsible for the sufficiency of the bond and the securities, at the time of taking the same. And if the property be delivered according to the condition of the bond, the constable shall receive the same, and proceed to sell as in other cases. And whenever there shall be a failure of delivery, agreeably to said bond, the constable shall return the bond with the execution, to the justice, noting in

his return the facts of the case, after which time the bond shall be at the disposal of the obligee therein.

SEC. 14. The obligee in a delivery bond, shall not, in case of a forfeiture, be compelled to resort thereto in the first instance, but may proceed further on the original judgment (which shall not in such case be considered as satisfied) by execution or otherwise, against either the property or body of the judgment debtor, as the case may warrant or require, in the same manner as if no such bond had been taken; and may if necessary, afterwards resort to the bond, or he may resort to the bond in the first instance. On failure to comply with the condition of such bond, the justice of the peace shall at the request of the plaintiff, issue a *capias ad-satisfaciendum* against the judgment debtor in the original case.

Remedies of obligee in delivery bond, in obtaining satisfaction of judgment.

SEC. 15. In actions on such delivery bonds, after a forfeiture, or against constables, or constables and their securities, for taking insufficient bonds or securities, the plaintiff's rule of damages, shall be first, the amount due on the execution, at the time of the forfeiture of the bond, with interest and ten per cent. thereon and the costs; except that the interest and ten per cent. shall not be allowed in costs, in case the value of the property not delivered, shall equal or exceed the amount due on the execution, at the time of such forfeiture; second, the value of the property not delivered, with interest and ten per cent. thereon, if such value shall not equal the amount due on the execution.

Damages on forfeited delivery bonds.

SEC. 16. No stay of execution shall be allowed to defendants, in judgments on delivery bonds, in any court; and no appeal shall be allowed to such defendants from justices to the circuit court, unless upon affidavit of merits in the appeal, and that the same is not sought to be taken for delay merely, but for justice.

No replevy of judgment on delivery bonds. No appeal but on affidavit of merits.

SEC. 17. Any person who shall purchase or bid off property, at constables sales, and fail or refuse to pay therefor, agreeably to the terms of sale, shall be liable to damages not exceeding half the amount of such purchase or bid, to be recovered by suit in any court of competent jurisdiction, in the name of the party to whom the money arising from such sale would be due and payable; one half of such damages, so recovered, to go to the use of the constable holding such sale, the other half to the use of the plaintiff in such suit.

Penalty for bidding and failing to pay at constable's sale.

SEC. 18. It shall be the duty of every constable, to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof, and to pay over to the proper party, on reasonable demand, or in the absence of such demand, to the proper justice, on

Penalty on constable for failing to return process or pay over money.

Remedy by sci. facias or on constable's bond.	the proper return day, any and all monies collected, or received by him, by virtue of his office, on execution or otherwise; and for failure to make such return at the proper time and place, or within six days thereafter, or to pay over to the proper party on reasonable demand, or to the proper justice in the absence of such demand, on the proper return day, or within six days thereafter, or for making false return; in either of these cases the constable shall be liable to the injured party, and may be proceeded against by scire facias, before a justice of the peace; or the constable and his sureties may be sued on their bond; and in either case, the party aggrieved, shall be entitled to recover and have of the constable in the one instance, or of the constable and his sureties in the other, the full amount collected or received and withheld by the constable, or which he might and should have collected and paid over, with interest and ten per centum thereon, and costs; but no interest or per cent. shall be computed or allowed on costs.
10 per cent damages allowed.	SEC. 19. Whenever it shall become necessary for a constable in the discharge of his duty, to commit any person to the custody of the sheriff, jailer or other keeper of the common jail of the county, such constable shall, together with the body, deliver to such sheriff, jailer or keeper, a certified copy of the execution, writ or other process, or warrant of commitment.
Proceedings on commitments.	SEC. 20. In serving or executing, mesne or final process, emanating from a justice or justices of the peace, a constable shall have and exercise the same authority and powers, over goods and chattels, or the persons of parties, that a sheriff or coroner has or may exercise over similar subjects, under the like process of courts of record; and mesne or final process, emanating from a justice or justices, shall have the same force and effect, over the subjects aforesaid, as the like process of courts of record, unless in cases otherwise specially provided for by statute.
Sheriff's powers granted constables.	SEC. 21. That whenever hereafter, the securities of any constable, shall become apprehensive that they will be sufferers by reason of abuse of his power, or the improper use of money by him collected for another, they may make complaint to the board doing county business, who shall forthwith notify such constable to appear before them, and enter into new bond and security, or be removed from office; and the said board is hereby authorized to hear and determine such case, in such manner as to them may seem just and right: <i>Provided</i> , That no order taken or made, by such examination, by the commissioners, shall do away, or affect, the bond previously given by the constable and his security.
Effect of justice's process.	
Securities of constable may have him removed or give other security.	
Proviso.	

CHAPTER XVIII.

An Act concerning Corporations.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever hereafter any corporate body shall be dissolved, the lands, tenements, hereditaments, goods, chattels, rights, credits, monies, and effects, belonging to the same, shall pass, as incident to the franchises of such corporation, and be vested in the state of Indiana as the legal proprietor: and right of action to recover and reduce the same, in whose possession soever they may be, into the hands and control thereof, shall belong to the state and its assigns; and shall be for the purpose and intent to discharge, settle, and pay all contracts, obligations, and trusts, of what description soever the same may be, contracted or incurred by such corporation during the existence of their corporate privileges; and all contracts, obligations, and trusts made between such corporation and other persons, shall be and remain in full force: and all debts, dues, and demands shall and may be prosecuted and recovered, in the name of the state of Indiana, or her assigns, against all persons, against whom rights or actions in favour of such corporation existed, either at law or in equity, prior to the dissolution of such corporation.

Corporate body dissolved, property vests in the state.

For what purpose.

SEC. 2. That the legal capacity, in which the said state shall take the estate real and personal aforesaid, shall be conjoint of that of heir and administrator: and the duties and trusts, thereby created, shall be performed by the treasurer of state and auditor of public accounts, or such persons, as they may assign the same to; such assigns always giving bond with penalties and sureties to be approved of by said treasurer and auditor, payable to the state of Indiana, and conditioned for the faithful performance of the trusts and duties in them vested.

Duties and trusts performed by the treasurer and auditor.

SEC. 3. That in distributing the estate real and personal aforesaid, all the creditors of any such corporation shall after paying the charges and expenses incident to the execution of the trusts and duties aforesaid, be paid, in proportion to their several claims, so far as the estate real and personal aforesaid will pay the said creditors, and if there be a residue in any case, it shall, after payment of the debts, be a trust for the holders of stock in such corporation, to be paid them, according to the value of the stock owned by them in proportionate shares. And in all cases after the discharge of all claim of a legal or equitable nature, continued in force by the provisions of this act upon the property aforesaid of such corporation in favour of other persons, the state of Indiana shall be the legal owner of the residue.

Distribution, how made.

CHAPTER XIX.

An Act relative to County Boundaries.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the district of country within the following boundaries, shall form and constitute the county of Switzerland, to wit: Beginning at a point on the Ohio river, between fractional sections, numbered twenty-two and twenty-seven, in town three, range one west; thence due west to the old Indian boundary; thence northwardly with said boundary line, to the line dividing sections thirty-four and twenty-seven, in township six and range twelve; thence from said boundary line due west, to the north-west corner of section thirty-three, in township six, and range twelve east of the second principal meridian; thence south with the sectional line, between fractional sections, twenty and twenty-one, to the Ohio river, and thence with said river to the place of beginning.

SEC. 2. That the county of Dearborn shall be bounded as follows, to wit: On the south by the county of Switzerland; on the west by the old Indian boundary; on the north by the county of Franklin; and on the east by the state of Ohio, and the Ohio river.

SEC. 3. That all that district of country included within the following boundaries, shall form and constitute the county of Franklin, to wit: Beginning at the corner of townships, seven and eight, on the line of the state of Ohio; thence due west to the northern boundary of the purchase of Grouse land; thence southwardly with said boundary, to the middle of range eleven; thence north to the line dividing townships twelve and thirteen; thence east with said line, to the south-east corner of section thirty-three, in township thirteen, and range thirteen; thence north to the south line of Fayette; thence east to the boundary of Union county; thence with the southern boundary of the same, to the Ohio line, and south with said Ohio line to the place of beginning.

SEC. 4. That all that district of country, inclosed within the following boundaries, shall form and constitute the county of Union, to wit: Beginning at the south west corner of section thirty-six, in township thirteen, range thirteen, east of the second principal meridian; thence east with the section line, to the south east corner of section thirteen, town ten, in range one, west of the first principal meridian, being the line dividing the states of Ohio and Indiana; thence north, to the north east corner of section twelve, in township twelve, of range one, west of the first principal meridian; thence west with the section line, to the north west corner of sec-

tion twenty-five, in township fifteen, in range thirteen, east of the second principal meridian; and thence south, to the place of beginning.

SEC. 5. That all the district of country, included within the following boundaries, shall form and constitute the county of Ripley, to wit: Beginning at the south east corner of section numbered thirty-one, in township six north, of range numbered ten east, being the south east corner of Jennings county; thence north with the line of Jennings county, to the Indian boundary; thence north eastwardly with said boundary, to the line of Franklin county; thence east with said line, to the old boundary line; thence southwardly with said old boundary, to a point thereon, one mile north of the line dividing townships five and six; thence from said point, due west, to the north west corner of section thirty-three, in township six, in range twelve; thence one mile south, and thence due west to the place of beginning.

SEC. 6. That all the territory included within the following boundaries, shall form and constitute the county of Randolph, to wit: Beginning at the Ohio state line, where the line dividing townships fifteen and sixteen strikes the same; thence west with the said township line, until it strikes the old Indian boundary; thence to, and with the centre line of township eighteen, to the north west corner of section twenty, in township eighteen, and range twelve east of the second principal meridian; thence north to the line dividing townships twenty-one and twenty-two; thence east to the Ohio state line, and thence with said state line to the place of beginning.

SEC. 7. That all that part of the county of Delaware, included within the following boundaries, shall form and constitute the county of Rush, to wit: Beginning at the south west corner of section twenty-seven, in township twelve north, of range eight east, of the second principal meridian; thence east eighteen miles, to the south east corner of section twenty-eight, in township twelve north, of range eleven east; thence north to the line dividing townships fifteen and sixteen; thence west eighteen miles, to the north west corner of section three, in township fifteen north, of range eight east; thence south to the place of beginning.

SEC. 8. That all the district of country included within the following boundaries shall constitute and form the county of Henry, to wit: Beginning at the south west corner of section thirty-two, town sixteen north, of range twelve east; thence north to the township line dividing towns sixteen and seventeen; thence east to the south east corner of section thirty-two, township seventeen, range twelve; thence north to the north east corner of section twenty, town eighteen,

range twelve; thence west to the range line dividing eleven and twelve; thence north to the southern boundary of Delaware county; thence west twenty miles; thence south twenty miles; thence east to the place of beginning.

Wayne.

SEC. 9. That all that district of country included within the following boundaries, shall form and constitute the county of Wayne, to wit: Beginning at the south west corner of section thirty-two, town sixteen north, range twelve, east of the second principal meridian; thence north to the township line dividing towns sixteen and seventeen; thence east to the south east corner of section thirty-two, township seventeen, range twelve; thence north to the north east corner of section twenty, town eighteen, range twelve; thence east to the state line; thence south with said line to the north east corner of section twelve, town twelve, range one, west of the first principal meridian; thence west twelve miles to the north west corner of section twenty-five, town fifteen, range thirteen, [east] of the second principal meridian; thence south one mile; thence west with the section line, eight miles to the south west corner of section twenty-seven, town fifteen, range twelve, east of the second principal meridian; thence north with the line dividing sections twenty-seven and twenty-eight, to the line dividing townships fifteen and sixteen; and thence west with said line to the place of beginning.

Jefferson.

SEC. 10. That the territory included within the following boundaries, shall form and constitute the county of Jefferson, to wit: Beginning at a point on the Ohio river, where the line dividing townships one and two strikes the same; thence on a direct line, agreeably to actual survey, to the eastern line of section thirteen, in town two north, range eight east; thence north, to the south east corner of township three; thence north two miles, to the line dividing sections twenty-four and twenty-five; thence west two miles to the north east corner of section twenty-seven; thence north two miles to the north east corner of section fifteen; thence west two miles to the north east corner of section seventeen; thence north one mile to the north east corner of section eight; thence west one mile to the north east corner of section seven; thence north one mile to the township line; thence west one mile to the north west corner of said township; thence north with the line dividing ranges seven and eight, east of the second principal meridian, to the line dividing townships four and five; thence east with said line four miles; reserving however all that part of the town of Paris, being a part of the north east quarter of section number four, township number four north, in range number eight east, to the county of Jennings; thence north two miles; thence east two miles; thence north two miles; thence east two miles; thence north two miles; thence east with the line

dividing townships five and six, to a point thereon, two miles east of the line dividing ranges eleven and twelve; thence south with the line of Switzerland county to the Ohio river, and thence with the same to the place of beginning.

SEC. 11. That all that district of country, included within the following boundaries, shall form and constitute the county of Fayette, to wit: Beginning at the south east corner of section thirty-three, in township thirteen, range thirteen east of the second principal meridian; thence running east to the south east corner of section thirty-five, in township thirteen, range thirteen east of the second principal meridian; thence north with the Union county line to the north west corner of section numbered thirty-six, in township fifteen, range thirteen; thence west on said line, to a line dividing sections twenty-seven and twenty-eight, in township fifteen, range twelve; thence north on said line, to a line dividing towns fifteen and sixteen; thence west six miles; thence south eighteen miles; thence east to the place of beginning.

SEC. 12. That hereafter the county of Decatur shall be bounded as follows, to wit: Beginning at the south west corner of section eighteen, in township numbered eight north, of range eight east of the second principal meridian; thence north fifteen miles, to the north west corner of section six, in township numbered ten north, of range numbered eight east; thence east three miles, to the south east corner of section thirty-three, in township numbered eleven north, of range numbered eight east; thence north seven miles, to the north west corner of section thirty-four, in township numbered twelve north, of range numbered eight east; thence east eighteen miles, to the west boundary of Franklin county; thence south, with said boundary line to the north line of Ripley county; thence with the old boundary line, to the north line of Jennings county; and thence west with the Jennings county line, to the place of beginning.

SEC. 13. That all the territory included within the following boundaries, shall form and constitute the county of Jennings, to wit: Beginning at the north west corner of section numbered nineteen, in township eight north, range seven east; thence south with said line dividing ranges six and seven, east of the second principal meridian, to the south fork of the Muscatituck river; thence eastwardly with the same, to the line dividing ranges seven and eight; thence north to the line dividing townships four and five; thence east with said township line four miles; thence north two miles; thence east two miles; thence north two miles; thence east two miles; thence north two miles; thence east with the line dividing townships five and six north, to the south east corner of section thirty-one, in township six north, range

ten east; thence north with the sectional line, to the Indian boundary; thence westwardly with said boundary, to a point from which a line drawn due west, will pass through the centre of township eight, to the place of beginning: *Provided*, That all that part of the town of Paris, situate in the north east quarter of section numbered four, in township numbered four north, of range numbered eight east, and which formerly belonged to the county of Jefferson, be and the same is hereby attached to the county of Jennings, and shall hereafter be considered as a part of, and included within the county boundary of the said county of Jennings, any thing in this act to the contrary notwithstanding.

Floyd.

SEC. 14. That the territory included in the following boundaries, shall form and constitute the county of Floyd, to wit: Beginning on the Ohio river, where the line dividing sections six and seven, in township four south strikes the same; thence west with said line to the south west corner of section three, in town four south, and range five east; thence north with the line dividing sections three and four, to the north east corner of section sixteen, in township three south, of range five east; thence west with the line dividing sections sixteen and nine, to the south west corner of section nine; thence north, with the line dividing sections eight and nine, to the south east corner of section five; thence west, with the line dividing sections five and eight, to the south west corner of section five; thence north with the line dividing sections five and six, to the north west corner of section thirty-two, in township two, in range five; thence west with the line dividing sections thirty and thirty-one, to the south west corner of section thirty; thence north with the range line, to the south west corner of section eighteen; thence west with the line dividing sections thirteen and twenty-four, in township two, in range four, to the south west corner of section thirteen; thence north with the line dividing sections thirteen and fourteen in said range, to the corner of sections numbered twenty-three, twenty-four, thirteen and fourteen, in township numbered one, south of range numbered four east, in the south line of the county of Washington; thence due east with the south line of Washington county, to the summit of the silver creek knobs; thence southwardly, with the extreme height of said knobs, to a point intersecting the extended sectional line dividing sections twenty-four and twenty-five, in town numbered one south, in range number four east; thence east with said extended line, to the Illinois grant line; thence with the Illinois grant line, south forty degrees east, to silver creek in said grant, on the south side of lot number sixty-six; thence down said creek with the meanders thereof, on the west

side of the same, to the mouth thereof; thence down the Ohio to the place of beginning.

SEC. 15. That the county of Harrison, shall hereafter be bounded as follows, to wit: On the south by the Ohio river, on the west, by the Crawford county line, on the north by the southern boundary of the county of Washington, until it strikes the line of Floyd county, and on the east by the county of Floyd.

Harrison:

SEC. 16. That all the district of country within the following boundaries, shall form and constitute the county of Jackson, to wit: Beginning at Big Sand creek, where the line dividing ranges six and seven, east of the second principal meridian, crosses the same; thence down said creek with the meanders thereof, to its junction with the Driftwood Fork of White river; thence down said river with the meanders thereof, to where an east and west line running through the centre of township seven north, strikes the north west side of the aforesaid river; thence west with the said line, to where it crosses the line dividing ranges three and four; thence north with said line three miles, to the north east corner of town seven; thence west with the line dividing towns seven and eight, to the line of Monroe county; thence south with said line, to the north west corner of section sixteen, in town five north; thence east two miles, to the north east corner of section number fifteen; thence south with the sectional lines, to the Driftwood Fork of White river; thence up said river, with the meanders thereof, to the mouth of Muscatituck river; thence up the last mentioned river to the forks thereof; thence up the South Fork to where the line dividing ranges six and seven crosses the same, and from thence north with said range line to the place of beginning.

Jackson:

SEC. 17. That all the territory included within the following boundaries, shall form and constitute the county of Monroe, to wit: Beginning on the line dividing townships six and seven north, where the sectional line dividing sections thirty-two and three, in range two east of the second principal meridian crosses the same; thence north with said sectional line, to the line dividing townships seven and eight; thence east with said last named township line to a point thereon, where the line dividing sections thirty-one and thirty-two intersects the same; thence north with said last mentioned line, to the line dividing the counties of Bartholomew and Johnson; thence west with said line, as far as the south east corner of section thirty-three, in town eleven north, of range two west; thence north with the last mentioned section line, until it strikes the west fork of White river; thence down said river to where the line dividing ranges two and three, west of the second principal meridian

Monroe:

strikes the same; thence south with said range line, to where it intersects the line dividing townships six and seven north; thence east with said township line to the beginning.

Morgan.

SEC. 18. That all the territory included within the following boundaries, shall form and constitute the county of Morgan, to wit: Beginning on the township line dividing ten and eleven north, where the line dividing the ranges two and three east crosses the same; thence west to the centre of range two west, of the second principal meridian; thence north nine miles; thence west three miles, to the line dividing ranges two and three west; thence north eleven miles, to the corners of sections nineteen and thirty; thence east with said line twenty-four miles, to the line dividing ranges two and three east; thence south to the place of beginning.

Warrick.

SEC. 19. That all the territory included within the following bounds, shall form and constitute the county of Warrick, to wit: Beginning on the Ohio river, four miles west of the sectional line passing through the centre of range seven; thence running north to Little Pigeon creek; thence up said creek with the meanders thereof to the Polk Patch fork; thence up the last mentioned stream, with the meanders thereof, to the line dividing townships four and five south; thence east with said township line, to the line dividing ranges five and six; thence north to the line of Dubois county; thence west to the line dividing the counties of Pike and Dubois; thence running north two miles; thence west twelve miles; thence north one mile; thence west to Gibson county; thence south with the eastern boundary of Gibson county, to the north east corner of the county of Vanderburgh; thence south with the same to the Ohio river; and thence with the said river to the place of beginning.

Spencer.

SEC. 20. That all that district of country included within the following boundaries, shall form and constitute the county of Spencer, to wit: Beginning at a point on the Ohio river at the commencement of the east line of the county of Warrick; thence northwardly with said line to where the same strikes the north boundary of the county of Dubois; thence east with the line dividing the counties of Perry and Dubois, being the line dividing ranges three and four; thence south with said range line, until it strikes Anderson river; thence down said river with the meanders thereof to the Ohio river; thence down the same to the place of beginning.

Dubois.

SEC. 21. That all the territory included within the following boundaries, shall form and constitute the county of Dubois, to wit: Beginning at a point on the bank of the East fork of White river, at which the centre line of range six, shall intersect said fork of White river; thence running south with said centre line, with the line of Pike and Warrick

counties, to the northern boundary line of Spencer county; thence east with said line, to the line dividing ranges three and four west; thence north with the same three miles; thence east to the line dividing ranges two and three west; thence north with the said line to Lick creek; thence with the meanders thereof, to the East fork of white river; thence down said river to the place of beginning.

SEC. 22. That all the district of country included within the following boundaries, shall form and constitute the county of Martin, to wit: Beginning at the north east corner of township four north, of range three west, of the second principal meridian; thence south with the range line dividing two and three west, to the north east corner of section thirteen, in township one north, of range three west; thence west with the section line dividing twelve and thirteen in said township, to the eastern branch of White river; thence down with the meanders of said river, to the sectional line dividing twenty-three and twenty-four, of township one north, of range five west; thence north with said sectional line, dividing thirty-five and thirty-six in township two, three and four north, of range five west, to the township line dividing four and five; thence east with said township line, to the place of beginning: And that townships five north, of ranges three and four west of the second principal meridian, be and the same are hereby attached to the county of Martin, to remain a component part of said county for all purposes whatever.

SEC. 23. That all the district of country included within the following boundaries, shall form and constitute the county of Daviess, to wit: Beginning at the forks of White river; thence up the east fork of said river, to the line dividing sections twenty-three and twenty-four, in town one north, range five west, of the second principal meridian; thence north with said sectional line, to the line dividing towns four and five north; thence east one mile to the line dividing ranges four and five west; thence north six miles; thence west with the line dividing towns five and six, to the west branch of White river; and thence down the same to the place of beginning: And that townships five north, of ranges three and four west, of the second principal meridian, be, and the same are hereby attached to the county of Daviess, until otherwise directed by law.

SEC. 24. That all the district of country included within the following boundaries, shall form and constitute the county of Greene, to wit: Beginning at the north east corner of township eight north, of range three west, of the second principal meridian; thence south, to the south east corner of township six north, of range three west; thence west, to the south west corner of township six north, of range seven

west; thence north, to the north west corner of township eight north, of range seven west; thence east to, and with the south boundary of Clay and Owen counties, to the place of beginning.

Owen.

SEC. 25. That all the territory included within the following boundaries, shall form and constitute the county of Owen, to wit: Beginning at the south east corner of town nine north, of range three west, of the second principal meridian; thence west with the said township line, to the south east corner of Clay county, in town nine north, of range six west; thence north twelve miles; thence east six miles; thence north nine miles; thence east to the centre of range two west; thence south to the west branch of White river; thence down the same, to the line dividing ranges two and three west; and thence south with said range line, to the place of beginning.

Putnam.

SEC. 26. That all the district of country included within the following boundaries, shall form and constitute the county of Putnam, to wit: Beginning at the centre of town twelve north, on the range line dividing ranges five and six west, of the [second] principal meridian; thence east eighteen miles, to the line dividing ranges two and three west; thence north twenty-seven miles, to the line dividing towns sixteen and seventeen north; thence west eighteen miles, to the line dividing ranges five and six; thence south twenty-seven miles, to the place of beginning.

Clay.

SEC. 27. That all that tract of country included within the following boundaries, shall form and constitute a new county, to be known and designated by the name of the county of Clay, to wit: Beginning at the south west corner of township numbered nine, of range number seven; thence east ten miles; thence north twelve miles; thence east six miles; thence north nine miles; thence west four miles; thence north nine miles; thence west ten miles; thence south six miles; thence west two miles; and thence south twenty-four miles to the place of beginning.

Fountain.

SEC. 28. That all that tract of country included within the following boundaries, shall form and constitute the county of Fountain, to wit: Beginning where the line dividing townships seventeen and eighteen crosses the channel of the Wabash river; thence east to the line running through the centre of range six, west of the second principal meridian; thence north to where the said line strikes the main channel of the Wabash river; thence running down with the meanderings of said river, to the place of beginning.

Montgomery.

SEC. 29. That all the district of country included within the following boundaries, shall form and constitute the county of Montgomery: Beginning in the centre of range six, on the

line dividing towns sixteen and seventeen; thence north twenty-four miles; thence east twenty-one miles, to the line dividing ranges two and three; thence south to the line dividing towns sixteen and seventeen; thence west to the place of beginning, shall form and constitute a new county, to be known and designated by the name of Montgomery. The county seat for the county of Montgomery, shall be established at Crawfordsville, on the south-west quarter of section thirty-two, in town nineteen north, and range four west: *Provided*, That the proprietor or owner of said town or quarter section, shall comply with the following conditions, to wit: That he shall lay off into town lots, in said quarter section, eighty acres, and on or before the twentieth day of March next, execute a bond to the county commissioners, binding himself to convey by general warranty deed, to the said commissioners and their successors in office, one equal half of said lots, to be sold and conveyed by said commissioners, for the use and benefit of said county; the commissioners and proprietor taking choice about, beginning at the lowest number, and ascending until the whole number shall be divided; and shall further bind himself to convey to said commissioners, one suitable lot, without the limits of the town plat for a burying ground; one lot for the purpose of erecting a school house thereon; four other lots which are to be disposed of by the commissioners, in the following manner, to wit: Any religious society erecting a house of public worship, of a description to be agreed on by the commissioners, shall be entitled to a lot; the first applying and building to have first choice: *Provided however*, that the proprietor shall defray all expenses attending the laying out of said lots.

SEC. 30. That all the territory included within the following bounds, shall form and constitute the county of Pike, Pike. to wit: Beginning on White river, where the range line dividing ranges nine and ten west, strikes the same; thence south with said range line to where the base line crosses the same; thence east with said base line one mile, to the sectional line dividing sections thirty-one and thirty-two, in township one north of range nine, west of the second principal meridian; thence south with the last mentioned sectional line, to the north-west corner of section seventeen, in township one south, of range nine west, of the second principal meridian; thence east with the sectional line dividing sections eight and seventeen, nine and sixteen, to the north-west corner of section fifteen; thence south with the sectional line, dividing sections fifteen and sixteen, until it crosses the Patoka river; thence up the same with the meanders thereof, to the sectional line dividing sections four and five, in township two south, of range eight west; thence

south with the said sectional line, to the line of Warrick county; thence east and south, with the Warrick county line, to the west line of Dubois county; thence north with said line, to the White river: thence down the same with the meanders thereof, to the place of beginning.

Gibson.

SEC. 31. That all the territory included within the following boundaries, shall form and constitute the county of Gibson, to wit: Beginning at a point on the White river where the line dividing ranges nine and ten west, strikes the same; thence down the same, to its junction with the Wabash; thence down the said last named river, to the line of Posey county; thence with the line of Posey county, south and east, to the line of Vanderburgh county; thence east with the same, to the line of Warrick county; thence continuing east with the Warrick county line, to the line dividing sections thirty-two and thirty-three, in town three south, of range eight west, of the second principal meridian; thence north with the said sectional line, to the river Patoka; and thence with the line of Pike county, to the place of beginning.

Posey.

SEC. 32. That all the territory included within the following boundaries, shall form and constitute the county of Posey, to wit: Beginning on the Ohio river, where the range line dividing ranges eleven and twelve, strikes the same; thence north with said range line, to the line dividing townships three and four south; thence west six miles; thence north to the north east corner of section thirty-six in township three, of range thirteen; thence west to the Wabash river; thence down said river, with the meanders thereof, to its confluence with the Ohio; and thence up the last named river, to the place of beginning.

Vanderburgh.

SEC. 33. That all the territory included within the following boundaries, shall form and constitute the county of Vanderburgh, to wit: Beginning on the Ohio river, where the range line dividing ranges eleven and twelve west, strikes the same; thence north with said range line, to the centre of township four south, of Buckingham's base line; thence east through the centre of township four, to the range line dividing ranges nine and ten; thence south with the said range line, to the line dividing townships five and six south; thence east to the first section line in range nine; thence south with said section line to the Ohio river; thence down the Ohio river, with the meanders thereof, to the place of beginning.

Knox.

SEC. 34. That the county of Knox, shall be bounded on the west, by the Wabash river; on the north by the line dividing townships five and six north; on the east by the main channel of the West Branch of White river; and on the

south by the main channel of White river, to its junction with the Wabash river.

SEC. 35. That all the territory included within the following boundaries, shall form and constitute the county of Sullivan, to wit: Beginning on the Wabash river, where Sullivan. the line dividing towns five and six north, strikes the same; thence east to the line dividing ranges seven and eight, west of the second principal meridian; thence north with said line, to the line dividing towns nine and ten; thence west to the Wabash river; thence down the same to the place of beginning.

SEC. 36. That all the territory included within the following boundaries, shall form and constitute the county of Vigo, to wit: Beginning at a point on the Wabash river, Vigo. where the line dividing towns nine and ten north strikes the same; thence east to the line dividing ranges seven and eight west; thence north with said line, to the line dividing towns twelve and thirteen; thence east two miles; thence north six miles, to the line dividing towns thirteen and fourteen; thence west with the same, to the state line, dividing this state from the state of Illinois; thence south with the state line, to the Wabash river; thence down said river to the place of beginning.

SEC. 37. That all the district of country included within the following boundaries, shall form and constitute the county of Parke, to wit: Beginning on the Wabash river, on the Parke. line dividing towns thirteen and fourteen; thence east to the line dividing ranges five and six; thence north eighteen miles to the line dividing towns sixteen and seventeen; thence west three miles; thence north six miles; thence west to the Wabash, and down the same to the place of beginning.

SEC. 38. That the district of country included within the following bounds, shall form and constitute the county of Vermillion, to wit: Beginning on the west bank of the Wabash, where the line dividing townships thirteen and fourteen north, crosses the same; thence west to the state line; thence north with the state line, to the line dividing townships nineteen and twenty north; thence east to the main channel of the Wabash river; thence south with the meanders thereof, to the place of beginning.

SEC. 39. That the district of country included within the following bounds, shall form and constitute the county of Hendricks, to wit: Beginning at the south east corner of section twenty, in township fourteen north, of range two east; thence west, twenty miles to the east line of Putnam county; thence north with said line twenty miles, to the north west corner of section eighteen, in township seventeen, in range two west; thence east twenty miles, to the north west

corner of Marion county; thence south twenty miles with said county line, to the place of beginning.

Boon.

SEC. 40. That all the territory included within the following boundaries, shall form and constitute the county of Boon, to wit: Beginning at the south west corner of the county of Hamilton; thence north with the line dividing ranges two and three, seventeen and a half miles, to the centre stake of section thirteen, township twenty, range three east; thence westwardly, twenty-four miles, to the centre stake on the west side of section eighteen, township twenty, range two west; thence south with the line dividing ranges two and three west, seventeen and a half miles, to the north west corner of the county of Hendricks; thence east, with the northern boundary of the counties of Hendricks and Marion, to the place of beginning.

Bartholomew.

SEC. 41. That all the district of country within the following boundaries, shall form and constitute the county of Bartholomew, to wit: Beginning at the south west corner of section eighteen, in township seven north, of range four east; thence north three miles, to the north east corner of town seven; thence west with the line dividing towns seven and eight, to the line of Monroe county; thence north to the line dividing towns ten and eleven; thence east with said line, to the north east corner of township ten, of range seven east; thence south with the range line dividing ranges seven and eight, to the south east corner of section thirteen, in township eight north, of range seven east; thence west to the range line dividing ranges six and seven, at the north west corner of section nineteen, in township eight north, of range seven east; thence south with said range line, to where it intersects Big Sand creek; thence down said creek with the meanders thereof, to its junction with Driftwood river; thence down said river with the meanders thereof, to a point from which a line due west, passes through the centre of township seven, to the place of beginning.

Shelby.

SEC. 42. That all that part of Delaware county, contained within the following boundaries, shall form and constitute the county of Shelby, to wit: Beginning at the south-east corner of section thirty-three, in township eleven north, of range eight east, of the second principal meridian; thence north twenty-four miles, to the north-east corner of section four, in township fourteen north, of range eight east; thence west seventeen miles, to the north-west corner of section two, in township fourteen north, of range five east; thence south twenty-four miles, to the north boundary of Bartholomew county; thence east seventeen miles to the place of beginning.

SEC. 43. That the territory included within the following boundaries, shall form and constitute the county of

Johnson, to wit: Beginning at the south-west corner of section thirty-four, in town eleven north, of range five east, the same being the south-west corner of Shelby county; thence running north with the line of said county, to the north-west [south-east] corner of Marion county; thence west to the north-east corner of Morgan county; thence south with the line of said county, to the township line, dividing townships ten and eleven; thence east with said line to the place of beginning.

SEC. 44. That all the territory included within the following bounds shall form and constitute the county of Madison, to wit: Beginning on the line dividing the counties of Henry and Madison, one mile south of where the line dividing townships seventeen and eighteen crosses the same; thence north with said county line, to the line dividing townships twenty-two and twenty-three; thence west to the Miami reservation; thence south with the line of said reservation, to the south-east corner of the same; thence west until a line running south will strike the north-east corner of Hamilton county; thence south with said county line, to one mile south of the line dividing townships seventeen and eighteen; thence east to the place of beginning.

SEC. 45. That all the territory included within the following bounds, shall form and constitute the county of Hancock, to wit: Beginning at the south-east corner of section thirty-five, in town fifteen, of range five east, of the second principal meridian; thence east with the township line dividing towns fourteen and fifteen, to the south-east corner of section thirty-three, in range eight; thence north to the line dividing towns fifteen and sixteen; thence east to the south-west corner of Henry county; thence north with said county line to a point thereon, one mile south of the line dividing towns seventeen and eighteen; thence west to the north-west corner of section four, in township seventeen, range five east; and thence south to the place of beginning.

SEC. 46. That all the district of country included within the following boundaries, shall form and constitute the county of Orange, to wit: Beginning at a point on the line dividing ranges two and three west, of the second principal meridian, the centre of town three north; thence with the same due south, to the Crawford county line; thence east with the same to a sectional line, two miles east of the line dividing ranges one and two east; thence due north with the same, to the centre of town three north; thence west to the place of beginning.

SEC. 47. That all the territory included within the following boundaries, shall form and constitute the county of Warren, to wit: Beginning at the north-east corner of Ver-

million county, on the Wabash river; thence west to the state line; thence north to the line dividing townships twenty-three and twenty four; thence east with said line to the western line of Tippecanoe county; thence south on the said western line of Tippecanoe county to the Wabash river; and thence with the meanders of said river to the place of beginning.

Tippecanoe. SEC. 48. That all that part of the county of Wabash, contained in the following boundaries, to wit: Beginning at the north-east corner of the county of Montgomery, on the township line dividing ranges two and three, west of the second principal meridian; thence north twenty-four miles; thence west twenty-one miles; thence south twenty-four miles; thence east twenty-one miles, with the north line of Montgomery county, to the place of beginning, shall constitute and form a new county, to be known and designated by the name of Tippecanoe.

Carroll. SEC. 49. That all that part of the county of Wabash contained within the following boundaries, shall be known and designated as the county of Carroll, in honor of Charles Carroll of Carrollton, the only surviving signer of the Declaration of Independence, to wit: Beginning at the north-west corner of township numbered twenty-four north, range two, west of the second principal meridian; thence south nine miles to the centre of township numbered twenty-three; thence east seventeen miles to the western boundary of the great Miami reservation; thence north with said boundary, eighteen miles to the centre of township numbered twenty-six; thence west eight miles to the south-east corner of section sixteen, range one west; thence north three miles to the township line dividing townships twenty-six and twenty-seven; thence west thirteen miles to the section line, dividing sections four and five, range three west; thence south with said sectional line, twelve miles to the northern boundary of Tippecanoe county; thence east four miles to the place of beginning.

Cass. SEC. 50. That all the territory included in the following boundary, shall form and constitute the county of Cass, to wit: Beginning on the west boundary line of the great Miami reservation, at the intersection of the township line, dividing townships twenty-five and twenty-six; thence north three miles; thence west eight miles, to the south west corner of section fifteen, township twenty-six, north of range one west; thence north three miles; thence west three miles to the range line dividing ranges one and two west; thence north to the boundary line of the purchase of 1826; thence east, with said line, about twenty-eight miles to the boundary of the five mile reservation, extending from the Wabash to Eel river; thence crossing the Wabash to a point

due east of the place of beginning; thence west to the place of beginning.

SEC. 51. That all that tract of country included within the following boundaries, shall form and constitute the county of Clinton, to wit: Beginning at the north west corner of section nineteen, in township twenty-three north, of range two west, on the east boundary of Tippecanoe county, where the south west corner of Carroll county strikes the same; thence south seventeen and a half miles to the half mile stake in section eighteen, in township twenty, in range two west; thence east to the half mile stake on the east side of section thirteen, township twenty, range two east; thence north seventeen and a half miles; thence west to the south east corner of Carroll county; thence west with the south boundary of said county, to the place of beginning.

Clinton.

SEC. 52. That all that tract of country, which is included within the following boundary, shall form and constitute the county of St. Joseph, to wit: Beginning at range numbered two west from the second principal meridian, of the state of Indiana, on the north line of the state; thence running east, to where range numbered three east, intersects the state line; thence south with the range line, thirty miles; thence west to range two west; thence north to the place of beginning.

St. Joseph.

SEC. 53. That all the territory included within the [following] boundaries, shall form and constitute the county of Elkhart, to wit: Beginning at range three east; and thence running with the state line twenty-four miles east; thence south twenty miles; thence west twenty-four miles; thence north twenty-four miles, to the place of beginning.

Elkhart.

SEC. 54. That all that tract of country which is included within the following boundaries, shall form and constitute the county of Allen, to wit: Beginning at a point on the line dividing this state and the state of Ohio, where the township line dividing townships twenty-eight and twenty-nine north, intersects the same; thence north with said state line twenty four miles; thence west to the line dividing [ranges ten and eleven east; thence south to the line dividing*] townships twenty-eight and twenty-nine north, thence east to the place of beginning.

Allen.

SEC. 55. That all that district of country included within the following boundaries, shall form and constitute the county of Lawrence, to wit: Beginning at the line dividing ranges two and three west, at the centre of town three north, and running thence east, to the line dividing the counties of Washington and Orange; thence north to the

Lawrence.

[* The words included in brackets, in the 54th section, are not found in the enrolled bill, but are taken from the 1st section of the act of 1823. Without these, or some other words, the boundary would not close.]

Driftwood fork of White river; where the line dividing sections four and five, in range two east, and town three north, crosses the same; thence up the same to a point whence a due north line touches the north east corner of section fifteen, in range two east, and town five north; thence two miles west, to the north west corner of section sixteen, in the town and range last aforesaid; thence due north, to the line dividing towns six and seven; thence west, to the line dividing ranges two and three west; thence south with the said range line, to the place of beginning.

Hamilton.

SEC. 56. That all the territory included within the following boundaries, shall form and constitute the county of Hamilton, to wit: Beginning on the range line dividing ranges two and three east, of the second principal meridian, at the south west corner of section seven, in township seventeen, and range three; thence running north on the said range line, to the township line dividing townships twenty and twenty-one; thence east on the said township line, to the north east corner of section five, in township twenty, and range six; thence south on the section line, to the south east corner of section eight, in township seventeen, and range six; and thence west on the section line to the place of beginning.

Marion.

SEC. 57. That all that part of the county of Delaware, contained in the following bounds, shall form and constitute the county of Marion, to wit: Beginning at the north east corner of section numbered fifteen, in township seventeen north, of range five east of the second principal meridian line, in the district of lands sold at Brookville; thence south twenty miles on the section line to the south east corner of section twenty-two, in township fourteen north, of range five east; thence west twenty miles, to the south west corner of section twenty-one, in township fourteen north, of range two east; thence north, to the north west corner of section four, township sixteen north, of range two east, to the second principal meridian, that being the west line of Marion county; thence running due north, parallel to the west line of sections thirty-three, twenty-eight, twenty-one and sixteen, to where it would intersect the north line of Marion county; thence due east to the north west corner of section sixteen, township seventeen, north of range two east, to where it strikes the north boundary of said county of Marion; thence east to the place of beginning.

Perry.

SEC. 58. That all the territory included within the following boundaries, shall form and constitute the county of Perry, to wit: Beginning on the Ohio river, where the second principal meridian strikes the same; thence north to the line dividing towns three and four; thence west six miles; thence south one mile; thence south with the line

dividing ranges three and four west, until it first strikes Anderson's river; thence down the same to the Ohio river; and thence up the Ohio river to the place of beginning.

SEC. 59. That all the district of country included within the following boundaries, shall form and constitute the county of Crawford, to wit: Beginning on the Ohio river, at the mouth of Big Blue river; thence up the same, with the meanders thereof, until it strikes the line dividing sections twenty-six and twenty-seven, in township three south, and range two east; thence north with said sectional line, until it strikes Big Blue river; thence up said Big Blue river, with the meanders thereof, until it strikes the line of Harrison and Washington counties; thence west with said line, to the corner of Washington county; thence south, to an east and west sectional line, dividing sections twenty-nine and thirty-two, in township one south, and range two east; thence west with said sectional line, to the line dividing ranges two and three west; thence south with said range line nine miles, to an east and west line, four miles north of the line dividing townships three and four south; thence east six miles; thence south four miles; thence east six miles, to the meridian line; thence south with the meridian line, to the Ohio river; thence up the same with the meanders thereof, to the mouth of Big Blue river, the place of beginning.

SEC. 60. That the county of Clark shall be bounded hereafter as follows, to wit: On the south-east by the Ohio river; on the south and west by the county of Floyd; on the north-west and north by the counties of Washington and Scott; and on the north-east by the county of Jefferson.

SEC. 61. That all the territory included within the following boundaries, shall form and constitute the county of Scott, to wit: Beginning at the south-east corner of section thirteen, in town two north, of range eight east, of the second principal meridian; thence north to the south-east corner of town three; thence north two miles to the line dividing sections twenty-four and twenty-five; thence west two miles, to the north-east corner of section twenty-seven; thence north two miles to the north-east corner of section fifteen; thence west two miles to the north-east corner of section seventeen; thence north one mile to the north-east corner of section eight; thence west one mile to the north-east corner of section seven; thence north one mile to the township line; thence west one mile to the north west corner of said township; thence north with the line dividing ranges seven and eight, to the South Fork of the Muscatuck river; thence down the same with the main channel thereof, to a point, from which a line running due south, will touch the south-west corner of section twenty-nine, in

town two north, of range six east; thence east two miles; thence south one mile, to the township line dividing one and two; thence east with said line, to the Clark county line; thence north-eastwardly, until it touches the south-west corner of section eighteen, of town two, range seven; thence east to the place of beginning.

Washington.

SEC. 62. That all the territory included within the following boundaries, shall form and constitute the county of Washington, to wit: beginning at the south-west corner of section sixteen, in township one, south of range two east, of the second principal meridian; thence due east, to the summit of the Silver creek knobs; thence north-eastwardly with the extreme height of the same, between the waters of Silver creek and Blue river, to a point on the line dividing the counties of Clark and Scott, where a due west line will strike the south-west corner of section twenty, in township two north, of range six east; thence north, to the Muscatuck river; thence down the same and White river, to where a sectional line running north from the beginning, crosses said White river; thence south with said sectional line to the place of beginning.

Delaware.

SEC. 63. That all that tract of country included in the following boundaries, shall form and constitute the county of Delaware, to-wit: Beginning at the north-east corner of Henry county; thence due north with the western boundary of Randolph, to the north-east corner of section numbered eight, township numbered twenty-two north, of range numbered twelve east; thence west to the north-east corner of section number eleven, township number twenty-two north, of range number eight east; thence south to the north-west corner of Henry county; and thence east with the northern boundary of said county, to the place of beginning.

Suits not
abated.

SEC. 64. All complaints, pleas, suits, causes of action, and prosecutions, of what kind and nature soever, existing at the time of the publication of this act, in the several counties above, shall be continued and carried on to final judgment and execution, as if this act had not been passed.

Centre of rivers & streams to be the boundary of counties, bordering, &c.
Proviso.
This act not to alter boundaries except, &c.

SEC. 65. That in all cases where counties shall be bounded by rivers or lesser streams, the middle of the main channel of such streams shall be considered as the true boundary: *Provided however*, That nothing in this act shall be so construed, as to alter or change any of the county boundaries heretofore established, except the counties of Marion, Hendricks, and Monroe, but the same shall be taken and considered to all intents and purposes, as though this act had not passed.

CHAPTER XX.

An Act to regulate the mode of doing County Business in the several Counties in this State.

[APPROVED, JANUARY 19, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That there shall be and hereby is organized in each county in this state, a board of commissioners for trans-acting county business, to consist of three qualified electors, any two of whom shall be competent to do business, to be elected by the qualified electors of the several counties respectively, on the first Monday in August next, as general elections are conducted. *Provided however,* In voting for commissioners, the ticket shall always show which is voted for, for first, second or third district, and should there be two or more candidates in any one district, the person having the highest number of votes, shall be elected for such district.

C'ty boards
organized.

Three com-
missioners to
be elected.

Proviso.

SEC. 2. At the first election in pursuance of this act, the person having the highest number of votes shall serve three years, the person having the next highest number of votes shall serve two years, and the person having the next highest number of votes shall serve one year; and thereafter annually, one commissioner shall be elected who shall serve three years, and each commissioner elected according to the provisions of this act, shall continue in office until his successor is elected and qualified; but if two or more persons shall have an equal number of votes as above, their grade shall be determined by lot by the clerk, in the presence and under the direction of the returning officers.

Term of ser-
vice.

SEC. 3. Each person elected as a commissioner, shall, on receiving a certificate of his election, take the oath or affirmation required by the constitution of this state, before some person legally authorized to administer the same; which oath or affirmation, being certified on the back of such certificate, under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to take his seat with, and act as a member of the board, during the time for which he was elected.

Comm'rs.
oath.

SEC. 4. The commissioners thus elected and qualified, shall be considered a body corporate and politic, by and under the name and style of the board of commissioners of the county of ———, and as such, by and under such name and style, may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court either of law or equity, and do and transact all business on behalf of their respective counties, that may be assigned them from time to time by law; and in all cases where their respective counties may have been injured, or may hereafter be injured, in their goods, chattels, lands,

Corporate
name and
powers.

tenements, rights, credits, effects, or contracts; such commissioners shall and may, by and under their corporate name and style, without setting out their individual names, bring any suit or suits, action or actions, either in law or equity, which may be best calculated to obtain redress for any such injury, in the same way and manner that private individuals might or could do, and may in like way and manner, by and under their corporate name and style, be sued, by any person or persons having any manner of claims against such county.

Co'ty boards,
when & where
to meet.

SEC. 5. The board of commissioners shall meet at the court house, in each and every county, for the purpose aforesaid, or at the usual place of holding the circuit court in such county, on the first Mondays in January, March, May, September, and November, in each and every year, and may sit three days at each term, if the business of the county shall require it: *Provided however*, If the circuit court shall meet on any of the before mentioned days, the commissioners shall meet on the Monday preceding.

Proviso.

Clerk of C.
court to be
clerk of C.
board.

SEC. 6. The clerk of the circuit court shall, by virtue of his office, attend the meeting of the board of commissioners, and keep a record of their proceedings, and do such other business as he shall be required by law to do; and the sheriff of the county shall also, by himself or deputy, attend said board and execute their orders.

Preference in
payment of
claims vs.
county.

SEC. 7. Where money has been advanced by any clerk, or other county officer, for the use and benefit of his county, pursuant to the requisitions of law, the board doing county business shall order such money, so advanced, to be first paid; and where there is any judgment or judgments against any county in this state, the board may in their discretion, order when and in what manner such judgment or judgments, shall be discharged, not inconsistent with the constitution of this state or of the United States, any law to the contrary notwithstanding. And when any county shall owe the commissioners for locating any seat of justice therein, such claims shall be preferred to any other against said county; and the collector shall receive the said orders for commissioners' wages, and shall pay the same out of the first monies that shall come to his hands, after such orders shall be presented to him, and the said orders accepted shall be a sufficient voucher in the hands of such collector for any claims the county may have against him, to their full amount.

When board
is divided
cause to be
continued.
Vacancies in
board, how
filled.

SEC. 8. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be continued until the next meeting, before it shall be finally determined. When any vacancy shall happen in the office of commissioner, the circuit court of the county, or the two associate judges in vaca-

tion, shall appoint a suitable person or persons to fill such vacancy until the next annual election of commissioners, when such vacancy shall be filled by an election by the electors of the county.

SEC. 9. It shall be the duty of the board of commissioners at their May session, in each year, to receive and inspect the listers books, and levy a county tax according to law, and cause their clerk to make out a duplicate for collection accordingly.

SEC. 10. The commissioners of each county respectively, shall have and use a common seal, for the purpose of sealing their proceedings; and copies of the same, when signed and sealed by the said commissioners, and attested by their clerk, shall be good evidence of such proceedings, on the trial of any cause, in any of the courts of this state. The commissioners aforesaid, at their session in November, or when the circuit term prevents their meeting in November, then at their first meeting thereafter, in every year, shall make a fair and accurate statement of the receipts and expenditures of the preceding year, and have the same set up at the court house door, and at two other public places in their county respectively, and published in some newspaper in their county, if there be any; and if the said commissioners, or either of them, after accepting their appointment, shall neglect or refuse to do his or their duty, in office, he or they so offending, shall, on conviction by indictment before the circuit court of the proper county, be fined in any sum not exceeding one hundred dollars.

Seal and authentication.

Statement of receipts and expenses.

Penalty on commissioner for neglect of duty.

SEC. 11. And it is hereby made the duty of the present boards doing the business of the several counties, to meet on the first Monday of May, eighteen hundred and thirty-one, and lay their respective counties off into three equal commissioner's districts, numbered in numerical order, one, two, and three; and one commissioner shall be elected in each of said districts, by a vote of the whole county; and said districts when so laid off, may be altered once in every three years thereafter, if justice require it, and not oftener: *Provided however*, That nothing in this act shall be so construed as to affect the term of office of any commissioner heretofore elected. But when a vacancy shall occur in any board of commissioners, now in existence, the same shall be supplied by a person to be elected from one of such districts, in numerical order.

Comm'rs. districts, how formed.

Vacancy in old boards, how filled.

SEC. 12. That all the duties heretofore required of the boards doing county business, in the several counties in this state, and not included or otherwise directed in this act, be and the same is hereby made the duty of said commissioners, to do and perform, in the same manner as though it were named in this act.

Duties of C. boards.

Compensation.

SEC. 13. The commissioners so elected and qualified, shall each receive two dollars per day, for each and every day that they may necessarily be employed in transacting the county business; and said board of commissioners, when organized, shall possess the powers and authority heretofore given to the county board of justices.

Proceedings before present boards, continued.

SEC. 14. All suits, pleas, complaints, prosecutions, and proceedings, which may be pending in any court, to be tried for or against any board of justices, previous to the taking effect of this act, shall be prosecuted to final judgment and execution, in the same name and manner, as the same might have been done, had this law not been passed; and all contracts either written or verbal, made by such board of justices, previous to the taking effect of this act, shall remain valid in law and equity, and suit may be thereupon brought, in the same way and manner as the same might have been, had this act not have been passed, with this difference, that the corporate name of the board of commissioners shall be used, instead of the name of the board of justices.

Contracts of prest. boards, remain valid.

Books, how kept, and C. orders, how issued.

SEC. 15. It shall be the duty of the clerks of the several boards doing county business, to keep fair books, wherein shall be kept the accounts of the county, to attest all orders issued by the board for the payment of money, and enter the same in numerical order, in a book to be kept for that purpose; and shall copy into their said books the reports of the treasurer of the receipts and disbursements of their respective counties, and whenever the duplicate shall be put into the hands of the collector, it shall be the duty of said clerks, to send a statement of the sum wherewith such collector stands charged, to the county treasurer.

Statement to C. treasurer.

County orders may be divided.

SEC. 16. When any person has an attested county order in his own name, of a larger amount than his county tax, and is desirous to appropriate a part of such order to the payment of such tax, he is hereby authorized to apply to the clerk of the board doing county business, whose duty it shall be to give to the holder of such order, and in exchange therefor, two or more attested county orders, making together the same amount with the original order, which shall be thereupon cancelled; and such clerk shall insert in every such order, that the same with others, were so given in exchange to ——— for such original order, together with the number and amount of such original order; one of which orders shall be for the amount of his tax, and shall appear on its face to be intended for the payment thereof.

Certain claims, how paid.

SEC. 17. Whenever any person shall exhibit any claim against any county, for services rendered, for which the fund arising from the sale of lots, or otherwise, at the county seat, is specially appropriated, and those funds have been fully expended, it shall be the duty of the board doing coun-

ty business, to give such claimant an order on the county treasury, for such sum as may be due to such claimant, to be paid out of any monies not otherwise appropriated.

SEC. 18. Every collector of county taxes, is hereby required to receive any regularly attested county order, made by the board doing county business, when the same may be tendered to him by any person in payment of such person's taxes, due such county.

Collector shall receive county order.

SEC. 19. No collector, or other person doing county business, shall, either directly or indirectly, purchase or receive in payment, exchange, or in any way whatever, any demand against his county, or any county order for a claim allowed by the board doing county business, at any time during the period for which he may be elected, for a less amount than that expressed on the face of such order or demands against the county; and every person elected, or appointed to do county business, shall, before entering on the duties of his office, take an oath not to violate the provisions of this section; and any collector or other person doing county business, offending against the provisions of this section, on conviction thereof upon indictment or presentment, shall be fined for every such offence, in any sum not exceeding five hundred dollars.

Prohibited from taking C. order under par.

Penalty.

SEC. 20. That the qualified voters residing within the several townships, of the several counties of this state, shall meet together at the usual places of holding general township elections, on the first Monday in April next; and annually on the first Monday in April thereafter, for the purpose of electing as many constables in each township as there are justices of the peace within the same, and shall at the same time elect one inspector of elections for each township, two fence viewers, two overseers of the poor, and as many supervisors of highways as there are now or may hereafter be allotted to the respective townships by the proper board of commissioners; and in all cases of failure on the part of the qualified voters, to elect any such township officers, it shall be the duty of the board of commissioners, at the next session after the time such election should have been held, to appoint such officers, to remain in office until the time for the next election. Nothing in this act shall be so construed as to affect or repeal the laws now in force, regulating the manner of doing township business, in the counties of Dearborn and Switzerland, except as to the election of township supervisor.

Constables, inspector, fence viewers, overseers of poor, and supervisors of roads, how elected.

Proviso as to Dearborn and Switzerland counties.

SEC. 21. The above named township officers shall possess the same qualifications, and perform the same duties, as are required of such officers by the laws now in force; the said township elections to be held and conducted in the same manner that general and township elections are now held

Duties of townships officers.

and conducted, and the constables shall give such bond and security, for the performance of their duty, as is now required by law.

Highway districts.

SEC. 22. That the board of commissioners shall, so soon as may be after the first election held under the provisions of this act, divide the several townships within their respective counties, into as many highway districts as they may deem necessary; which districts shall be designated and numbered in numerical order, and recorded by the clerk of the board of commissioners. Where any vacancy shall happen in any of the township officers, the said board of commissioners shall, at their next session, appoint a suitable person or persons to fill such vacancy until the next annual election for township officers, when such vacancy shall be filled by an election of the electors of the township.

Vacancy in township offices, how filled.

Certificates of election.

SEC. 23. It shall be the duty of the said inspectors of elections in each township, within three days after such election, to make out and deliver to the clerk of the circuit court, a list of the several township officers, whose duty it shall be to make out certificates of the election of the person or persons elected, and the sheriff of said county shall deliver the same to the township officers so elected.

Court, court house, jail, &c.

SEC. 24. The circuit courts in counties where court houses shall not have been erected, shall be holden for the time being, at the place designated by law or selected by the court; and the boards of commissioners in such counties, shall with all convenient speed, proceed to the completion of a court house, jail, and other public buildings for the same, and keep the same in repair.

Trustee of seminary, how appointed.

SEC. 25. The board of commissioners, in their respective counties, at their first meeting after the passage of this act, or some subsequent meeting, shall appoint some fit person, as trustee of the public seminary of their respective counties, who, on acceptance of such appointment, shall take an oath of office, faithfully to discharge the duties of his said office according to law, and also give bond, payable to the state of Indiana, with two sufficient securities, in the penal sum of double the amount as near as may be, of the funds of the county seminary, conditioned for the faithful performance of the duties of his office, and for paying over all monies, and delivering over all books, bonds, and papers, that may be in his hands as trustee, to his successor in office, when his term of service shall have expired agreeably to law; which bond shall be filed in the office of the clerk of the proper county, and shall not be void on one recovery, but may be put in suit from time to time, as often as occasion may require: *Provided however*, That this act shall in no way be construed, so as to interfere with or repeal any existing laws, respecting the county seminary of Switzer-

His oath and bond.

Proviso.

land county, or any other county, for which special laws relative to county seminaries have heretofore been enacted.

SEC. 26. The board of commissioners, shall annually allow the clerk and sheriff of their county, such compensation for their extra services, as they may deem reasonable, not exceeding seventy dollars each; which annual allowance shall be considered a full compensation for all extra services, rendered the board of commissioners, the circuit court of such county, and the county, in any manner whatever.

Allowance to clerk and sheriff.

SEC. 27. The board of county commissioners in each and every county, shall cause a pound to be erected at or near the several court houses, with a good and sufficient fence, gate, lock and key, where estray horses, mules and asses may be kept, on the first day of the terms of the circuit courts; and the said board shall also appoint some fit person, who shall take charge of said pound, and keep the same in repair, and whose duty it shall also be to attend at the said pound, on the several court days, during the time such estrays are directed to continue there, with the key of the same; and the said board shall make such reasonable allowance for the erecting and keeping said pound as to them shall seem proper, to be paid out of the county treasury; and any person being appointed and undertaking the charge of said pound, and failing to discharge his duties agreeably to the directions herein expressed, shall forfeit and pay to the person injured, the sum of eight dollars for every such offence, with costs, recoverable before any justice of the peace of the county where such offence shall have been committed.

Pounds, pound-keepers and duties.

Penalty.

SEC. 28. From all decisions of the several boards of commissioners, there shall be allowed an appeal to the circuit court, by any person or persons aggrieved; and the person or persons appealing, shall take the same within thirty days after such decision, by giving bond with security, to the acceptance of the clerk of such board, conditioned for the faithful prosecution of such appeal and the payment of costs already accrued, and which may thereafter accrue, if the same shall be adjudged by the said court, to be paid by such appellant; and the clerk shall docket such appeal, with the cases pending in the circuit court, within twenty days after the taking of such appeal.

Appeals, to C. court.

CHAPTER XXI.

An Act establishing a County Treasurer.

[APPROVED, JANUARY 8, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be the duty of the several boards doing county business, of each county, at their first meeting after the first day of February annually, to appoint some respectable elector as county treasurer; who shall give bond and security to the satisfaction of said board, payable to the state, conditioned for the faithful discharge of the duties of his office; that he will account for all monies which may come into his hands as county treasurer; that he will deliver unto his successor in office, all books, papers, documents, and other things which he may hold by virtue of his office; and that he will pay him the balance of all monies due the county.

County treasurer, how appointed.

Treasurer's bond.

Treasurer to receive and disburse money &c.

Keep acc'ts.

Treasurer's report to county board.

Treasurer's annual settlement.

Treasurer shall prosecute delinquent collector of revenue.

And for jury fees collected.

County orders, how paid.

SEC. 2. It shall be the duty of the treasurer, to receive all monies due and accruing to the county, to pay and disburse the same, on orders drawn by the board doing county business of the proper county, attested by their clerk, and not otherwise. The said treasurer shall keep a true and just account of all monies received and disbursed, and hold and keep the same at all times ready for the inspection of said board, and shall at every term of said board, furnish them with a statement thereof, balanced to the first day of said term, shewing all the monies received and disbursed by him since his appointment, or since his last settlement, and the balance remaining in his hands, together with the arrearages of taxes in the hands of the collector. He shall moreover, once in every year, settle his accounts with the said board, and produce his vouchers, which being allowed, shall be cancelled by them, and retained and filed by the clerk of said board.

SEC. 3. It shall moreover be the duty of said treasurer, so soon as he shall have received from the clerk of the circuit court, a statement of the amount of taxes put into the hands of the sheriff or collector of his county, or of any of his predecessors, and which shall not have been accounted for, forthwith to proceed to collect from such delinquent, his securities, heirs, executors, or administrators, the sum or sums in arrear, and due from him or them to the county, and in like manner, when such treasurer shall be furnished by the clerk, with a statement of jury fees received by any officer, he shall forthwith proceed to collect the same according to law.

SEC. 4. County orders properly attested, shall be entitled to a preference as to payment, according to the order

of time in which they may be presented; and upon the receipt of money into the treasury, it shall be the duty of the treasurer to appropriate and set apart the same, for the discharge of such county orders, so presented: *Provided however*, That the county treasurers, are hereby required to receive, of any collector, all county orders which such collector, may have received in payment of county tax, without regard to the priority of the number of any such order or orders.

Proviso, as to
receiv'g coun-
ty orders.

SEC. 5. That the county treasurer, shall have for his services, one and a half per centum, for all monies received, and one and a half per centum, for all moneys paid out for the county; excepting however, monies arising from the sale of lots at county seats, in which case he shall receive no more than two per cent. for both receiving and paying out.

Treasurer's
per centum.

SEC. 6. The county treasurer, shall be subject to be removed from office, by the board doing county business, for neglect or misconduct in office, and in case of the death, resignation, removal from office, or removal from the county, of any county treasurer, the said board, or a majority thereof, are hereby authorized and required, to appoint some suitable person, to fill said office in his place.

Treasurer,
how removed
from office.

SEC. 7. In all cases where any person is desirous of vending any species of merchandise, in this state, which is not the product of the United States, it shall be the duty of such person, so wishing to vend any such merchandize, to pay to the county treasurer, the tax which may be laid on him, by the board doing county business, under the provisions of the act for assessing and collecting the revenue, and shall take the treasurer's receipt therefor, which receipt, such person shall forthwith file with the clerk of the circuit court, who shall give such person a licence thereon accordingly in the following form, to wit:

License to
vender of mer-
chandize, how
granted.

Clerk to li-
cense.

FORM OF LICENSE.

State of Indiana, *county, sct:*

A. B. having this day produced to me, the county treasurer's receipt for the sum of , he, she or they (as the case may be) is hereby authorized to vend merchandize in such county, for the term of from the day of in the year ; which said license, shall authorize such person, to vend merchandize in such county, for the term therein named and set forth. But if the board doing county business shall not be in session, when such person may wish to commence vending such merchandize, it shall be lawful for such person, to give in, on oath, the amount of his capital, to such county treasurer, and pay to the treasurer the tax thereon, according to the rates laid down in said act for assessing and collecting the revenue, due respect being had to the time which will have to expire

Effect there-
of.

How granted
in vacation of
county board.

Treasurer to receipt to vender of merchandize.

Clerk's permit.

Tax on exhibitions, shows, &c. by treasurer.

Clerk's fee therefor.

Trustees of towns, may add a corporation tax on shows.

Sheriffs, collectors, &c. shall prosecute under this act for violations.

before the board will sit; and the treasurer shall give such person a receipt for the amount which may be so paid; which receipt such person shall forthwith deliver to the clerk of the circuit court, and such clerk shall thereupon give such person a permit, to vend merchandize in such county, until such board doing county business shall sit, and no longer.

SEC. 8. That hereafter it shall be the duty of any person or persons, who may intend to exhibit to public view, or show, any animal or animals, wax work or other figures, rope or wire dancers, feats of circus riding, or sleight of hand, for gain, to apply to the treasurer of each county, where such exhibition is to be made, and pay to said treasurer, not less than five, nor exceeding ten dollars, at the discretion of said treasurer, who shall receipt for the same; which receipt shall be presented to the clerk of the proper county, who is hereby required to make out his certificate under the seal of the said county, for which such clerk shall be entitled to receive as a fee therefor, the sum of fifty cents, which shall be a sufficient voucher for such applicant, or his agent, to show or exhibit such animal or animals, wax work or otherwise, during his stay in such county: *Provided*, That nothing in this act contained, shall prevent any board of trustees of any incorporated town, from taxing such exhibitions, agreeably to their corporate laws and ordinances, passed in pursuance thereof.

SEC. 9. All taxes arising from tavern licences or otherwise, shall be paid to the county treasurer.

SEC. 10. All sheriffs, coroners, constables, clerks, county treasurers, collectors, assessors, and justices of the peace, shall be required, and it is hereby made their duty, to cause to be prosecuted, all who may violate the provisions of this act.

CHAPTER XXII.

An Act organizing Circuit Courts, and defining their powers and duties.

[APPROVED, JANUARY 24, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That this state shall from time to time, be divided into circuits, as circumstances may require; and in each and every county, within each of the said circuits, there shall be a circuit court, which shall be holden at such times and places, as are, or may be fixed by law. The said courts so holden in each county, shall be called and styled — circuit court, according to the name of the county in which it shall be holden; and shall have a seal, to be devised by the

State to be divided into circuits.

Style of court.

Seal.

court, who shall cause a description thereof to be recorded.

SEC. 2. Each circuit court, shall consist of one president judge, and two associate judges, who shall be elected and commissioned in the manner provided by the constitution, and who shall, before entering upon the duties of their respective offices, take an oath or affirmation, similar to that which is required to be taken by the judges of the supreme court; a certificate of which oaths, shall be endorsed on their respective commissions, and a copy thereof filed, that of the president, shall be filed in the office of the secretary of state, and that of the associate judges, in the clerk's office, of the county for which they shall have been elected.

President and two associates.

Their oath.

SEC. 3. The circuit courts, organized by this act, shall be, and they are hereby made courts of record, and shall have jurisdiction in each and every county throughout the state, in and over all crimes and misdemeanors, of every name and description, which shall be committed within their jurisdiction; and shall and may hear and determine the same, and pronounce sentence, and award execution, according to law; and shall moreover have original jurisdiction in all causes, matters and things, at law and in chancery; and shall have full cognizance, of all actions, real, personal and mixed, in their respective circuits, to issue writs of *mandamus*, *habeas corpus*, and all other writs, necessary to carry these powers into effect, according to the course of the common law, and the usages of courts, not inconsistent with the constitution and laws of this state, and proceed thereon to final determination, according to law.

C. courts, courts of record.

Jurisdiction of C. courts in law and chancery.

SEC. 4. The said presidents, in their respective circuits, and the said associate judges, or either of them, in their respective counties, shall have full power and authority, either in or out of court, to issue writs of *habeas corpus*, and proceed to trial thereon, and hear and determine the same, according to the rules of the common law. And the said presidents, in their respective circuits, or the two associate judges of any of the said courts, in their respective counties, shall have power in vacation, to grant writs of *ne exeat* and *injunction*, and to make all such interlocutory orders, as may become necessary in the progress of a cause, under such restrictions and regulations, as are, or may be prescribed by law. The said presidents and associate judges, or any of them, shall have full power and authority, both in and out of court, to act as conservators of the peace, and to take all manner of recognizances and obligations, which shall be in the name of, and made payable to the state of Indiana; and all recognizances, for any offence or suspicion thereof, or for the peace, good behaviour, or appearance, which shall be taken by the said judges, or either of them, out of court, shall be

Judges may issue writs in vacation.

Habeas corpus.

Injunction, ne exeat, &c.

Judges may take recognizances &c. payable to the state.

Recognizances, where to be returned.

Process issuable to other counties, on forfeited recognizantes.

Original process issuable to other counties, on a criminal charge.

Subpœnas.

Commission to take depositions.

Style of process. How tested, &c.

No discontinuance for want of a quorum of judges.

But judge or sheriff may adjourn court.

Compensation to associate judges.

returned to the next circuit court, to be holden in the county where the same is or may be taken; and the said circuit courts, or any one of them, shall have full power and authority, to issue process into any county in this state, against any person or persons, who may have forfeited, or hereafter may forfeit, any such recognizance or obligation, and proceed according to law, to levy and collect the same, and when collected, to order the same to be paid over and disposed of according to law.

SEC. 5. To the end that all persons indicted or outlawed, for felonies or other offences, in one county, who shall remove into, or dwell in another county, may be brought to justice in the proper county where the offence was committed, it is hereby directed, that the said courts may issue their writ or writs or any other legal process, or any one of the judges thereof, in vacation, may issue his warrant or warrants, or any other legal process to all or any of the sheriffs, or other proper officer or officers of said county or counties, to take such person or persons indicted or outlawed; and it shall also be lawful for the said courts, to issue subpœnas and other process, to any county in this state, for summoning or bringing any person or persons before them, to give evidence, in and upon any matter examinable and triable before them or either of them, under such penalties as are or hereafter may be provided by law, with respect to such process. The said courts shall likewise have power and authority, as often as necessity may require, to issue commissions for the examination of witnesses, agreeably to the regulations which are, or hereafter may be established by law.

SEC. 6. All writs and process, issuing from and out of said courts, shall run in the name of the *state of Indiana*, and bear test in the name of the clerk who issued the same, be dated the time they issue, and made returnable according to law.

SEC. 7. There shall be no discontinuance of any suit, process, matter or thing, returnable to, or pending in any of the said courts, although a quorum of judges shall fail to attend at the commencement, or any other day of the term; but if such number shall not attend, as shall, under the provisions of the constitution, be authorized to hold a court, any judge of said court, or sheriff attending the same, may adjourn the said court for two days successively, and if a quorum shall not attend on the third day, or having attended one day, shall fail to attend on a subsequent day of the term, the court shall stand adjourned until court in course.

SEC. 8. The associate judges of the circuit courts of this state, shall receive for their services, two dollars per day, while attending the court thereof in that capacity, to be paid by the respective counties in which they reside: *Provid-*

ed however, That no associate judge, shall in any wise be entitled to be allowed such compensation, but upon producing the certificate of the clerk of the proper circuit court, certifying the number of days such associate judge may have attended the court; and in case he has not received compensation therefor, to certify that additional fact.

Their voucher for services.

SEC. 9. All allowances hereafter made by the circuit courts, to the sheriffs, for extra services or fuel, or to any other officer or person, for services rendered during the term of the court, shall be entered upon the records thereof, and the specific services named, for which the allowances are so made.

Allowances to sheriffs, &c.

SEC. 10. If a court shall not sit in any term, or have not continued to sit the whole term, or before the end of the term, shall not have heard and determined all matters ready for their decision, all such matters and things depending in said court, and undetermined, shall stand continued until the next succeeding term.

How certified Causes undetermined, are continued.

SEC. 11. The said circuit courts, shall have full power and authority, to administer all necessary oaths and affirmations, and punish by fine and imprisonment, all contempts of their authority, in any cause or examination before them.

C. courts may administer oaths. And punish for contempts.

SEC. 12. Whenever any writ of execution, shall be illegally issued by the clerk of any circuit court, or his deputy, the president judge of such circuit, on application of the party against whom the same is issued, in vacation, at his chambers, may, on reasonable notice of the time and place of such application having been given to the opposite party, his agent, assignee or attorney, together with the points of exception relied on, order such writ of execution to be called in, and that the officer having such writ, shall forthwith desist from proceeding on the same; and if neither such opposite party, his agent, assignee or attorney, resides within the state, such notice may be served by a copy thereof being posted up in such clerk's office, for a reasonable length of time, before such application: *Provided however,* That such procedure shall not take from the party aggrieved, his remedy by bill and writ of injunction, in cases where such remedy has been heretofore afforded by courts exercising chancery jurisdiction.

President judges may grant restraining orders, &c. Notice of such application to be given.

Officer to desist.

Notice by copy.

Proviso, that right to enjoin shall remain.

SEC. 13. For the purpose of preventing error, in entering the judgments of said courts, it shall be the duty of the clerks, to draw up each days proceedings at full length, and the same shall be publicly read in open court, and corrected when necessary; after which they shall be signed by the president judge, and in case of his absence, by the two associate judges; and no proceedings or judgment, of any of the said courts, shall be of any force or be considered valid, until the same are so read and signed.

Proceedings of each day to be signed and read.

Concurrent jurisdiction given, of crimes committed, on streams, bordering, &c.

Salary of circuit judges.

SEC. 14. That in all cases where the division line, either between this state and the states of Ohio, Kentucky and Illinois, or the Michigan Territory, or of any one or more counties, within this state, shall be navigable streams or waters, or those declared so by law, the said several states, and adjacent counties within this state, shall have, possess and exercise, concurrent jurisdiction over the said navigable streams, for the enforcement of civil or criminal justice.

SEC. 15. The circuit judges, shall each be allowed an annual salary of seven hundred dollars, which shall be audited by the auditor of public accounts, and paid out of the treasury quarterly.

CHAPTER XXIII.

An Act dividing the state into Judicial Circuits, and fixing the times of holding courts therein, and for other purposes.

[APPROVED, FEBRUARY 10, 1831.]

1st circuit. SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the counties of Vermillion, Parke, Montgomery, Fountain, Warren, Tippecanoe, Clinton, Carroll, Cass, and St. Joseph, shall form and constitute the first judicial circuit;

2nd circuit. The counties of Scott, Jackson, Lawrence, Orange, Washington, Harrison, Floyd, and Clark, shall form and constitute the second judicial circuit;

3rd circuit. The counties of Ripley, Jennings, Jefferson, Switzerland, Dearborn, Franklin, and Decatur, shall form and constitute the third judicial circuit.

4th circuit. The counties of Gibson, Posey, Vanderburgh, Warrick, Spencer, Perry, Crawford, Dubois, and Pike, shall form and constitute the fourth judicial circuit;

5th circuit. The counties of Marion, Hendricks, Morgan, Johnson, Bartholomew, Shelby, Hancock, Madison, Hamilton, and Grant, shall form and constitute the fifth judicial circuit;

6th circuit. The counties of Allen, Randolph, Delaware, Henry, Wayne, Union, Fayette, Rush, and Elkhart, shall form and constitute the sixth judicial circuit;

7th circuit. The counties of Knox, Daviess, Martin, Greene, Monroe, Owen, Vigo, Putnam, Sullivan, and Clay, shall form and constitute the seventh judicial circuit.

When held in 1st circuit. SEC. 2. That the circuits within the first judicial circuit shall be annually held on the days and times following, viz: In the county of Vermillion on the first Mondays of March and September; in the county of Parke on the second Mon-

days of March and September; in the county of Montgomery, on the third Mondays of March and September; in the county of Fountain on the fourth Mondays in March and September; in the county of Warren on the Thursdays (1) next after the courts in the county of Fountain; in the county of Tippecanoe, on the second Mondays of April and October; (2) in the county of Carroll, on the Thursdays succeeding the courts in the county of Clinton; in the county of Cass, on the fourth Mondays of April and October; and in the county of St. Joseph, on the first Mondays of May and November. The circuit courts to be holden as above in the first judicial circuit, in the counties of Vermillion, Parke, Montgomery, Fountain, Tippecanoe, and Cass, shall each sit six days if the business require it; and in the counties of Warren, Clinton, Carroll, and St. Joseph, shall each sit three days if the business thereof require it.

SEC. 3. In the county of Scott, on the first Mondays of March and third Mondays of August; in the county of Jackson, on the second Mondays of March and first Mondays of September; in the county of Lawrence, on the third Mondays in March and second Mondays in September; in the county of Orange, on the fourth Mondays of March and third Mondays in September; in the county of Washington, on the first Mondays of April and fourth Mondays of September; in the county of Harrison, on the third Mondays of April and first Mondays of October; in the county of Floyd, on the third Mondays of May and October; and in the county of Clark, on the fourth Mondays of May and third Mondays of November. The circuit courts to be holden as above, in the second judicial circuit, in the counties of Jackson, Lawrence, Orange, and Floyd, shall each sit six days, if the business thereof require it; in the counties of Washington and Harrison, shall each sit twelve days, if the business thereof require it; in the county of Scott, shall sit at the spring term, six days, at the fall term, twelve days, if the business thereof shall require it; and in the county of Clark, shall at each term, sit until the business thereof is finished.

SEC. 4. In the county of Ripley, on the third Mondays of February and August; in the county of Jennings, on the fourth Mondays of February and August; in the county of Jefferson, on the first Mondays of March and September; in the county of Switzerland, on the third Mondays of March and September; in the county of Dearborn, on the fourth

(1) According to the engrossed bill, in the eighth line of the second section, after the word Thursday, the words "of the week" should be inserted.

(2) In the same section, eleventh line, after the word October, the following should be inserted: "in the county of Clinton, on the third Mondays of April and October."

Mondays of March and September; in the county of Franklin, on the second Mondays of April and October; in the county of Decatur, on the fourth Mondays of April and October. The court in the counties of Jefferson, Dearborn, and Franklin, shall sit twelve days each, if the business require it; and in the counties of Ripley, Jennings, Switzerland, and Decatur, six days each, if the business require it.

In 4th circuit.

SEC. 5. In the county of Dubois, on the Thursday preceding the second Mondays in April and October; in the county of Pike, on the second Mondays in April and October; in the county of Gibson, on the third Mondays of February and August; in the county of Posey, on the fourth Mondays of February and August; in the county of Vanderburgh, on the second Mondays of March and September; in the county of Warrick, on the third Mondays of March and September; in the county of Spencer, on the Thursdays after the courts in Warrick; in the county of Perry, on the fourth Mondays of March and September; and in the county of Crawford, on the Mondays after the courts in the county of Perry. The circuit courts to be held as above in the fourth circuit, in the said counties of Pike, Gibson, Vanderburgh, Perry, and Crawford, shall each sit six days, if the business thereof require it; in the counties of Dubois, Warrick, and Spencer, shall each sit three days, if the business thereof require it; and in the county of Posey, shall sit twelve days each term, if the business thereof require it.

In 5th circuit.

SEC. 6. In the county of Hancock, on the Wednesdays succeeding the last Mondays in February and August; in the county of Shelby, on the first Mondays of March and September; in the county of Bartholomew, on the second Mondays of March and September; in the county of Johnson, on the third Mondays of March and September; in the county of Marion, on the fourth Mondays of March and September; in the county of Hendricks, on the second Mondays of April and October; in the county of Morgan, on the third Mondays of April and October; in the county of Madison, on the second Mondays of May and November; and in the county of Hamilton, on the third Mondays of May and November. The circuit courts of the above fifth circuit, in the counties of Shelby, Bartholomew, Johnson, Morgan, Hendricks, Hamilton, and Madison, shall each sit six days if the business thereof require it; in the county of Marion, twelve days if the business thereof require it; and in the county of Hancock, four days at each term, if the business thereof require it. And the circuit courts in the county of Grant, shall hold their session on the third Mondays of August, at the house of David Branson, until otherwise provided by law in said county, and shall sit three days if the business require it.

In 6th circuit.

SEC. 7. In the county of Randolph, on the third Mondays

of February and August; in the county of Wayne, on the fourth Mondays of February and August; in the county of Union, on the first Mondays of March and September; in the county of Fayette, on the second Mondays of March and September; in the county of Rush, on the third Mondays of March and September; in the county of Henry, on the fourth Mondays of March and September; in the county of Delaware, on the Mondays succeeding the courts in the county of Henry; in the county of Allen, on the Mondays succeeding the courts in Delaware; and in the county of Elkhart, on the Mondays succeeding the courts in Allen. The circuit courts to be holden as above, in the sixth judicial circuit, shall each sit six days, if the business require it, except the said circuit courts in the county of Wayne, and those courts shall sit every judicial day, until the commencement of the courts in the county of Union, if the business thereof require it.

SEC. 8. In the county of Knox, on the first Mondays of March and September; in the county of Daviess, on the third Mondays of March and September; in the county of Martin, on the fourth Mondays of March and September; in the county of Greene, on the first Mondays of April and October; in the county of Monroe, on the second Mondays of April and October; in the county of Owen, on the third Mondays of April and October; in the county of Putnam, on the fourth Mondays of April and October; in the county of Clay, on the Thursdays following the second Mondays of May and November; in the county of Vigo, on the third Mondays of May and November; and in the county of Sullivan, on the first Monday of June and the last Monday of November. The circuit courts to be holden as above, in the seventh judicial circuit, shall sit six days, if the business thereof require it, except the counties of Knox and Vigo, which shall each sit twelve days, if the business require it, and except that the circuit court of Clay county, shall sit three days, if the business thereof require it.

SEC. 9. All writs, subpoenas, or other process, which may have issued from any circuit court, since the last sitting thereof, or which may hereafter issue previous to this act being received in the respective counties, shall be deemed and taken, and are hereby made returnable to the first day of the first term of the several circuit courts, to be holden by virtue of this act; and all suits, pleas, complaints, prosecutions, recognizances, actions, motions, or other proceedings, either civil or criminal, which are now pending, or may hereafter be pending, prior to the time this act shall be received in the several counties, shall be taken up and acted upon at the first term of such court, to be holden under this act, and be disposed of according to law, in the same manner

Process issued, when returnable.

as if no alteration had been made in the time of holding such court.

SEC. 10. That the secretary of state shall forthwith cause the state printer to print in pamphlet form, three hundred copies of this act, [and the act of this session, dividing the state into seven judicial circuits,] (1) and have the same ready for distribution immediately.

All acts, and parts of acts, coming within the purview of this act, be, and the same are hereby repealed.

This act shall take effect, and be in force, from and after its passage.

(1) The words in the 10th section, included in brackets, are not found in the engrossed bill, nor is there any act of the title therein described, on file in the secretary's office.

CHAPTER XXIV.

An Act organizing the Supreme Court, and defining its powers and duties.

[APPROVED, JANUARY 17, 1831.]

Sup. court to consist of three judges.
Court of record.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the supreme court shall consist of three judges, who shall be commissioned by the governor, any two of whom shall be competent to hold a court; which court shall be a court of record, to all intents and purposes.

Oath of the judges.

SEC. 2. Every judge so commissioned, before he enters on the duties of his office, shall take an oath or affirmation, which may be administered by any person legally authorized to administer oaths, in the form following, to wit: "You do solemnly swear, (or affirm as the case may be,) that you will support the constitution of the United States, and the constitution of the state of Indiana, and that you will, to the best of your ability and judgment, faithfully discharge the duties of your office, as a judge of the supreme court of the state of Indiana." And each person so commissioned and sworn, shall have a certificate of having taken said oath, endorsed on the back of his commission, by the person administering the same, and a similar certificate filed in the office of the clerk of the said supreme court, and also in the office of the secretary of state.

Certificate of, endorsed on commission.

Court when & where holden.

SEC. 3. The said court shall be holden in the court house in the town of Indianapolis, on the first Monday in May and November in each and every year: the term commencing on the first Monday in May, shall be called the May term; and the term commencing on the first Monday in Novem-

ber, shall be called the November term. Each term shall continue thirty days, unless the business before the court shall be sooner disposed of, and may be continued beyond that time, should the judges deem it expedient and necessary.

SEC. 4. The supreme court shall appoint its own clerk, who, before he enters on the duties of his office, shall take an oath of office, similar to that which is prescribed in the second section of this act, which oath shall be administered by one of the judges of said court; and shall also give bond to the state of Indiana in the penalty of five thousand dollars, with at least two sureties, to be approved of by the said court, conditioned for the faithful discharge of the duties of his office, which bond shall be recorded in the said court and filed in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit from time to time, at the instance and for the benefit of any party injured, until the whole penalty shall be recovered thereon.

SEC. 5. The said court shall annually appoint one of the judges thereof, to inspect the clerk's office of the said court, and to report to the next term of said court, the condition in which he found the records and papers, which report shall be recorded.

SEC. 6. The sheriff of the county in which the supreme court shall be held, shall be an officer of the said court, and shall attend the same with a sufficient number of deputies; and the said sheriff and his deputies, shall be bound to perform the same duties, in relation to the business of the supreme court, in the county where the said supreme court sits, as they are, or may be required by law to perform in relation to the circuit courts. And in all cases where the sheriff or his deputy, attending the supreme court, shall be interested, or shall not be an indifferent person, the duties aforesaid shall be performed by such disinterested or indifferent persons as the said court shall appoint for that purpose. It shall be the duty of each and every sheriff within their respective counties, to serve, execute and return, all process, writs of execution, and all other writs to them directed from the supreme court, in like manner as they are empowered to serve or execute writs and process issued by the circuit courts within their respective counties; and the said sheriffs, in performing the duties aforesaid, and their securities, shall be liable for any non-feasance, mis-feasance, or mal-feasance in their said office, to the party injured: *Provided*, That where process of any kind, shall be directed to a sheriff of any county, (excepting the county where said court holds its sessions,) said sheriff shall be authorized to enclose said process in a letter, directed to the clerk of the

Term may continue thirty days.

Clerk, how appointed.

Take oath.

Give bond.

Clerk's office to be inspected.

Sheriff.

His duties.

All sheriffs shall serve process to them directed by the supreme court.

Sheriffs may return process by mail.

supreme court, and mail it at the post-office in his county seat, ten days before the regular return day thereof, which shall exonerate him from any liability for failing to make return: *Provided*, That in case he should have money to remit, the testimony of the post-master, that he mailed it, shall be necessary to exempt him from liability.

Appellate jurisdiction of the court.

SEC. 7. The supreme court shall have appellate jurisdiction in all cases, both in law and equity, co-extensive with the limits of the state; except that no appeal shall be allowed from any inferior court, to the supreme court, in any criminal case, nor shall a writ of error operate as a supersedeas, in any criminal case. Also all cases in chancery now pending and undetermined, or which may hereafter arise, in any of the circuit courts of this state, in which the president of such court is, or may be interested or prejudiced, by having been a party or counsellor, are hereby transferred to the supreme court, to be there determined, in the same manner, as if the same had been originally commenced in said court; and in all such cases, the supreme court shall have original jurisdiction. And it shall be the duty of the clerk of the circuit court, in which any such case is, or may be pending, upon the application of either party, to deliver over the papers on file in said case, in his office, together with a complete record of the proceedings, so far as they have been had in said cause, in order that the same may be transmitted to the clerk of the supreme court, to be by him docketed in the same manner as other causes; provided, the party so applying give bond in such sum as either of the associate judges of the said court shall deem sufficient, payable to the opposite party for the safe transmission of the said papers.

Clerk of circuits to deliver papers & records in certain cases, to be transmitted to the supreme court.

SEC. 8. There shall be no discontinuance of any suit, process, matter or thing, returnable to, or depending in the supreme court, although a sufficient number of judges shall fail to attend at the commencement, or any subsequent day of the term; but if a majority of them shall not attend, any judge of said court, or sheriff attending the same, may adjourn the said court, from day to day, for ten days successively; and if a quorum shall not attend on the eleventh, or having attended one day, shall fail to attend a subsequent day of the term, the court shall stand adjourned until court in course.

Judges failing to attend, court to be adjourned till court in course.

Executions same as those of circuit court.

Other process.

Rules.

SEC. 9. Executions to be issued from the supreme court shall be the same as those which are, or may be, by law directed to be issued from the circuit courts; and the supreme court, shall have power to direct all other writs, process, summonses, forms and modes of proceedings, to be issued, observed and used by the said court, and shall make rules

for that purpose, which shall be entered upon the records thereof, not inconsistent with the constitution and laws of the state.

SEC. 10. Writs of error issuing from, and appeals made to the supreme court, shall extend to all judgments and decrees, given by any of the inferior courts of record, except such judgments, as have been, or may be rendered by any of the inferior courts, confirming or reversing the judgment of any justice of the peace, where the amount in controversy, inclusive of interest and costs, is under the sum of twenty dollars: *Provided*, That in all cases where judgment is rendered, affirming or reversing the judgment of any justice of the peace, on an appeal to any inferior tribunal, where the amount in controversy, inclusive of interest and costs, is under fifty dollars, if a supersedeas shall be refused, the supreme court shall have no jurisdiction. Every appeal shall be prayed at the term of rendering the judgment, or decree appealed from; and the person appealing shall, by himself or some responsible person in his behalf, in the office of the clerk of the court, from whence the appeal is prayed, give bond and sufficient security, to be approved of by the said court, and within a time to be fixed by the court, to the appellee, for the due prosecution of the appeal; and the penalty of the said bond shall be in a reasonable sum, in the discretion of the court.

Writs of error and appeals.

Proviso, jurisdiction divested, where supersedeas is refused.

Appeal, when prayed for.

Appellant's bond.

SEC. 11. In all appeals and writs of error, the transcript of the record, shall be transmitted by the plaintiff in error, or appellant, to the clerk of the supreme court, within sixty days at most, from the time of taking such appeal, or suing out such writ of error, and shall not be thereafter received, unless for good cause shewn, further time be given by the court; and it shall be the duty of the clerk of the supreme court, whenever any appellant shall fail to file his appeal, agreeably to the requisitions of this section, to make out and deliver to the appellee, a certificate of such failure, which certificate, when presented to the clerk of the court below, shall be sufficient authority for execution and other proceedings in the case, as if no appeal had been granted. The appellee or defendant in error, may demand a trial at the term to which the appeal or writ of error is made returnable, and the court shall not continue the same to another term, without the consent of the appellee or defendant in error, unless upon good and sufficient cause. No pleadings shall be required on writs of error, except an assignment of errors, to be filed by the plaintiff, on or before the first day of the term, to which the writ of error is returnable, and an answer thereto, by the defendant, to be made at such time as the court shall

Transcript to be transmitted by plaintiff in error, in sixty days.

When appellee may demand trial.

No pleadings except assignment of errors.

direct; but the causes shall stand for trial, at the term to which the writ may be returned.

Writs of error, when to operate as a supersedeas.

Operation of supersedeas limited to four years.

Clerk to certify that supersedeas is expired.

Second supersedeas not grantable.

Bond.

Summons.

SEC. 12. No writ of error shall operate as a supersedeas, unless the supreme court, or some judge thereof, in vacation, after inspecting the errors which shall be assigned upon the transcript of the record, shall order the same to be made a supersedeas; and in such case, the clerk issuing the said writ, shall endorse thereon, that it shall be a supersedeas, and shall be obeyed accordingly. No writ of supersedeas, granted by the supreme court of this state, restraining any of the circuit courts from proceeding to the execution of any judgment hereafter by them rendered; shall be of any force, after four years from and after the time of granting such writ: *Provided*, The supreme court shall not, during that time, have affirmed or reversed such judgment. Upon application of the party interested, to the clerk of the supreme court, he shall certify under his hand and the seal of said court, the time of the expiration of said writs of supersedeas, which certificate, shall be evidence of the same; and when presented to the circuit court, shall be sufficient authority for said court to proceed to execution of said judgments; and it shall not be lawful for the supreme court, or any judge thereof, to award a second writ of supersedeas, to stay proceedings on any judgment, after the expiration of the limited time by this act, for the operation of a writ of supersedeas.

SEC. 13. Before any writ of error shall operate as a supersedeas, it shall be necessary, that a bond, to be approved by the clerk of the supreme court, be given, in like manner, and with the same conditions, and under the same penalties, as is provided in case of appeals; or that bond be given in like manner, in the office of the clerk of the court below, subject to such regulations and conditions, as the supreme court or any judge thereof may prescribe and direct. Writs of error shall be issued as a matter of right, on demand of any person applying for the same; and the clerk of the supreme court, at the time of issuing a writ of error, shall issue a summons, directed to the sheriff of the county in which such defendant in error shall reside, requiring him to summon said defendant, to appear, on the first day of the next term of the said court, to answer such error or errors. And if the summons shall appear, by the return of the sheriff or other officer, to have been served ten days before the return day thereof, the same shall stand for trial; agreeably to the provisions of the eleventh section of this act. If the summons shall be returned not executed, or if by any satisfactory proof, it shall appear to the court, that such defendant or defendants, is or are not an inhabitant or inhabitants of this state, the said court

may order, that notice of the pendency of such writ of error, be published in some one of the public newspapers, for three weeks successively; after which the same shall be proceeded upon, in all respects, as if process had been returned executed.

Notice of pendency, &c. when necessary.

SEC. 14. When the plaintiff in error shall obtain a transcript of the record, from the clerk of the inferior court, certified by such clerk, as being a full and complete transcript of the record in the suit or action named, and sealed with the judicial seal of said court, it shall be lawful for such plaintiff, to assign upon the said transcript, all the errors upon which he intends to rely, in order to reverse the said judgment or decree, and file the same with the clerk of the supreme court, who shall receive the same and endorse upon it when filed; and in such case it shall not be necessary for said clerk to issue a writ of error to the court below, but he shall issue a summons to the defendant or defendants in error, in the same manner, as if a writ of error had issued, and the supreme court shall proceed in all respects to determine the same accordingly.

Plaintiff may assign errors on the transcript, &c.

SEC. 15. The plaintiff, except in cases of wills, shall assign errors upon matters of law only, arising upon the face of the proceedings. In cases of wills, the plaintiff in error may assign errors upon matters of fact, as well as upon matters of law, to be determined by the court. If the judgment or decree be affirmed in the whole, the appellant shall pay to the appellee, a sum not exceeding ten per centum, at the discretion of the court, on the sum due thereby, besides the costs on the original suit and appeal. If the judgment or decree be reversed in the whole, the appellee shall pay to the appellant such costs as the court in their discretion shall award. If the judgment or decree be reversed in part, and affirmed in part, the costs of the original suit and appeal, may be apportioned between the appellant and appellee, in the discretion of the court. In case of a partial reversal, the supreme court shall give such judgment or decree, as the inferior court ought to have given. On appeals and writs of error, it shall be lawful for the supreme court, to issue execution, or remand the cause to the inferior court, in order that an execution may be there issued, or that other proceedings may be had thereon. When any judgment or decree shall be reversed on account of any error, which shall or may have taken place in the progress of the cause, in the court below, the supreme court shall not reverse the proceedings, any further than to include the first error which shall have been committed; and the cause shall be remanded to the court from whence it came, together with the opinion of the supreme court, and with instructions to the inferior court, to commence from the last regular proceedings

Errors in law and fact, when to be assigned.

Damages on affirmance.

On reversal.

Costs, when divided.

Court may issue execution or remand the cause.

Proceedings reversed to first error.

Cause remanded, &c.

Costs.

had thereon, and proceed to trial and judgment, in the same manner as if no proceedings had been had in the superior court, taking the opinion of the supreme court as their guide: and in such cases, the party having committed the first error, shall pay to the opposite party, such costs as the court shall order. When any writ of error shall have been made a supersedeas, and the judgment and [or] decree so superseded, shall be affirmed in part or in whole, the defendant in error shall be entitled to the same damages, which is [are] allowed by this act, in case of appeals.

Limitation.

SEC. 16. No writ of error shall be brought after the expiration of five years from the rendition of the judgment or decree complained of, unless the plaintiff in error, shall have been, at the time when such judgment or decree was made, an infant, feme covert, non compos mentis, imprisoned, or out of the limits of the United States on public business, in which case, the five years shall be computed from the time when such disability ceased.

Saving.

Judgment on
the merits,
neither stayed
nor reversed
after verdict.

SEC. 17. No judgment, after the verdict of twelve men, shall be stayed or reversed, where it shall appear to the court, that the merits of the case have been fairly and fully decided by such verdict, and that such verdict and the judgment thereon, might be effectually pleaded in bar to another action brought for the same cause. But nothing herein contained shall be construed to extend to, or cure any errors in the judgment of the court, in questions of law, which may have been brought up before the court, by the pleadings, or otherwise, if they appear upon the record. Whenever, on hearing an appeal or writ of error, the supreme court shall be equally divided in opinion, the suit shall be continued until the next term, and if then the court are still divided, the judgment or decree of the inferior court shall be affirmed.

Court divid-
ed, suit to be
continued un-
til the next
term.

Clerk, his du-
ty.

SEC. 18. The clerk of the supreme court, shall carefully preserve the transcripts of records certified to his court, with the bonds for prosecution, and all papers relative to them, and other cases pending in said court, docketing them, in the order in which he may receive them, that they may be heard in the same order, unless the court, for good cause to them shewn, may direct any to be heard out of its turn. The proceedings of every day during a term, shall be drawn up at full length, by the clerk against the next sitting of the court, and such corrections as may be necessary, being first made therein, shall be signed by the presiding judge. When any cause shall be finally determined, the clerk shall make a complete record thereof, not including the transcript from the court below. All writs and summonses, issuing from the supreme court, shall bear test, in

the name of the clerk, who issued the same, and shall be dated when they issued.

SEC. 19. The supreme court shall have power to impose and administer all necessary oaths and affirmations, to punish by fine and imprisonment, all contempts of authority in any cause, on examination before them, and to establish all necessary rules for that purpose, or any other, in conformity to the laws and constitution of this state, not otherwise provided for by law.

Powers of the court.

SEC. 20. Witnesses shall be summoned in the same manner, have the same privileges, and be subject to the same penalties, which are or may be prescribed by law, respecting those summoned to attend the circuit courts. Jurors may be summoned whenever required, in such manner as the court shall direct, and shall be liable to the same fines and penalties, which are or may be inflicted by law on those summoned to, and attending on the circuit courts.

Witnesses and jurors, how summoned.

SEC. 21. For good cause shewn, the supreme court, or any judge thereof in vacation, may grant commissions for the examination of witnesses; and the clerk of the said court, where any witness shall be about to depart from the state, or shall by age, sickness or otherwise, be unable to attend the court, or when the claim or defence of any party, or a material part thereof, shall depend on a single witness, may, on affidavit made and filed, issue a commission for taking the disposition of such person *de bene esse*, to be read at the trial, in case the witness shall be out of the jurisdiction of the court, or unable to attend. But the party obtaining such commission, shall give reasonable notice to the opposite party, of the time and place of taking such deposition.

Depositions:

SEC. 22. In the supreme court, the parties may manage their own causes personally, or by their attorneys properly authorized for that purpose, or by such attorneys at law, as by the rules of said court, may be permitted to manage causes therein.

Parties may appear in person or by attorney.

SEC. 23. The supreme court shall have a seal, to be devised by the judges thereof, and the description of the same in writing, shall be deposited in the office of the secretary of state, and remain a public record. The opinions and determinations of the said court, shall be in writing, except in cases and on subjects of an unimportant nature, which opinions and determinations, shall be recorded by the clerk, in a book kept for that purpose.

Seal.

Opinions of the court to be in writing.

SEC. 24. The supreme court of the state of Indiana, is hereby authorized to make such allowance to the sheriff of Marion county, or other officer who may attend on said court, as they may deem reasonable for his services, while in attendance in term time; as also an allowance for all fuel, stationary and other necessary articles, for the use of said

Sup. court may make allowance to sheriff for services, fuel, &c.

And to clerk for books, &c. court which may be furnished by said officer; and also to allow the clerk of said court, any sum they may deem reasonable, for record books and stationary, by said clerk furnished for the use of said court, which allowance shall be entered on the order book of said court, setting forth specifically, for what service or article the allowance was made; a copy of which orders certified by the clerk of said court, shall be sufficient authority for the auditor of state to audit said amount so allowed; and the treasurer shall pay the same, out of any monies appropriated to defray the expenses of the judiciary department.

Salary of judges.

SEC. 25. The judges of the supreme court, shall each receive an annual salary of seven hundred dollars, payable quarterly, by the treasurer of state, on warrants drawn by the auditor of public accounts.

CHAPTER XXV.

An Act to organize Probate Courts, and defining the powers and duties of Executors, Administrators and Guardians.

[APPROVED, FEBRUARY 10, 1831.]

Probate judge how elected.

Term of office.

Vacancy, how filled.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That there shall be organized, in each county within this state, a probate court consisting of one judge, to be elected septennially, by the qualified voters of such county, on the first Monday in August, next before, or at the time such office may become vacant, by the expiration of the term of service of the present or any future incumbent thereof, or next after the same may become vacant from any other cause than the expiration of the term of service of such incumbent, and such judges shall respectively hold their offices for the term of seven years, and until their successors may be chosen, and qualified, if the same shall so long behave well, and shall be commissioned by the governor accordingly. And if the said office shall become vacant, by any means other than the expiration of the term of service of the incumbent thereof, it shall be the duty of the clerk of such court, to certify, under the seal of such court, such vacancy to the governor, who shall thereupon fill such vacancy, by appointing some suitable person such judge aforesaid, to serve until the first Monday in August, then next to come, and until his successor be chosen and qualified, if so long he shall behave well.

SEC. 2. That no person shall be either elected, commissioned, or appointed such judge of the probate court as a

foresaid, until he shall first have obtained a certificate, from some one of the judges of the supreme court of this state, or from some one of the president judges of the circuit courts, that he is qualified to discharge the duties appertaining to the said office of probate judge: *Provided*, That nothing in this section contained shall be so construed as to require any such judge of the probate court to be a professional character.

Certificate of qualification.

Proviso.

SEC. 3. That no judge of the probate court shall enter upon the discharge of the duties of his office, until he shall first have taken an oath or affirmation, similar to that which is taken by the judges of the supreme court, which oath or affirmation, shall be endorsed on the commission of such judge, and a copy thereof certified by the officer administering the same, shall be filed in the office of the clerk of the circuit court of the proper county.

Oath of office.

SEC. 4. The said courts when organized, shall be called and styled "The Probate Court" according to the name of the proper counties, for, and within which the same may be so organized; and the same shall be and are hereby declared courts of record, and in the several counties for, and within which the same may be organized, shall have original and exclusive jurisdiction, in all matters relating to the probate of last wills and testaments,—granting of letters testamentary, letters of administration, and of guardianship,—the settlement and distribution of decedent's estates,—the examination and allowance of the accounts of executors, administrators, and guardians,—the protection of minors, idiots, and lunatics, and the security and disposition of their persons and estates,—the appointment of guardians, and the trusts, rights, and interests arising from, or incident to the relation of guardian and ward; and shall have power to punish contempts, and issue all writs, orders, citations, or other process, necessary to bring a party into court, or to carry the orders, judgments, and decrees of such court into effect; or to do execution thereon; and all process, issuing out of such courts, and all orders, and decrees, made by such courts, shall be executed, returned and enforced, in the same manner, and under like penalties, as the process, orders, and decrees of the circuit courts, are by law to be executed, returned and enforced; and the said courts shall have all the powers of courts of chancery, in coercing answers, and making up issues, punishing contempts, taking bills, petitions, answers, or other pleadings as confessed, and enforcing the same according to the laws of Indiana. The said courts shall respectively have a seal, to be devised by the court, who shall cause a description thereof to be recorded among their records.

Style of court.

Jurisdiction.

Process, how issued and effect thereof.

Chancery powers.

Seal.

SEC. 5. That in any county in which no probate judge

When associate judges shall have jurisdiction.

may have heretofore been elected and commissioned, under the provisions of the laws heretofore in force, the associate judges of the circuit court of such county, shall jointly act as a probate court, until there may be a probate judge elected, commissioned and qualified; and as such court shall have all the powers and jurisdiction by this act confined [conferred] upon such court, and shall, as it respects their duties, and the time and manner of the discharge thereof, be governed by the provisions of this act, in all particulars.

When circuit court shall have jurisdiction.

SEC. 6. That in all cases cognizable in the said probate courts, in which the judge of any of such courts may, or shall have been interested, either as counsel, administrator, executor, guardian, heir, legatee, or otherwise, the same, and all business relating thereto, shall be transacted, commenced, heard, and determined, by and before the circuit court of the same county; which court shall have full and complete jurisdiction thereof, being governed in all respects, by the provisions of this act.

Clerk & sheriff to be officers of probate court.

SEC. 7. The clerk of the circuit court of the proper county, and the sheriff of such county, or other officer acting as such, shall be officers of the court of probate, each in his proper capacity. It shall be the duty of the clerk to keep

Clerk to keep records, &c.

a fair record of all rules, orders, judgments, decrees, and other proceedings of the court, separate from the records of the circuit court, in books which he shall provide at the expense of the proper county. It shall be the duty of the sheriff

Sheriff's duty.

to attend the said court, during the session thereof, and to serve all orders and process, emanating from the probate court of any county in the state. And the said clerks shall

Clerk to docket suits, &c.

moreover keep a docket of all contests, suits, motions, or other proceedings pending, and of all letters testamentary, and letters of administration, until the same be finally settled; and shall keep a complete record book, in which he

Complete record.

shall from time to time, make a complete record of such suits, motions, and proceedings, as may be finally ended and determined.

Prerequisites to the grant of letters, &c.

SEC. 8. The probate courts aforesaid, in granting letters of administration, or letters testamentary, shall, before the delivery thereof to the person or persons to whom the same may be granted, require such person or persons, to make oath or affirmation, that he, she, or they, will truly and faithfully perform the duties and trusts committed to, and required of him, her, or them, as such executors or administrators; and to make and execute, together with good freehold security, a bond in double the amount of the estimated value of the estate to be administered, payable to the state of Indiana, conditioned that he, she, or they, will truly and faithfully perform the duties and trusts committed to him, her, or them, as such executors, or administrators, accord-

Oath of exr. or admr.

Bond.

ing to law, which bond shall be filed in the office of the clerk of said courts: And if the executor or executors, appointed by the last will and testament of a decedent, shall not be in life, or shall fail, or refuse to act, or if no such executor be appointed by such will, letters of administration, with the will annexed, shall be granted under the conditions aforesaid, to some person whose duty it shall be to execute such last will and testament. And if, after the granting of administration upon the estate of a decedent, a last will and testament of such decedent should be discovered, the letters of administration previously granted, shall be revoked, if there be an executor appointed by such last will and testament, who will accept the trust and qualify himself to act; but if the executor or executors refuse or fail to act, such discovered will shall be annexed to the letters of administration of the administrator previously appointed, who shall execute the same.

Administrator
with the will
annexed.

SEC. 9. That in the vacation of the probate court, the clerk of such court is hereby authorized to take proof of last wills and testaments, and to grant letters testamentary, and of administration, subject to confirmation or revocation, at the term of the said court next to be holden, in the discretion of such court: But previous to the granting thereof, the person or persons appointed thereby, shall execute a bond with sufficient freehold security, conditioned for the faithful discharge of the duties and trusts committed to him, her, or them, and for the true and prompt delivery and payment to his, her, or their successor, to be appointed by the said court, if any such should ever be appointed, of such estate, goods, chattels and assets, and the assignment to the said successor, of such assets, and of the rights and credits, which of right may belong to such successor, upon reasonable demand: Nor shall such clerk grant such letters testamentary, or of administration, until after the expiration of fifteen days from and after the decease of the testator or intestate; and if any person interested in the estate of such testator or intestate, shall before the granting of such letters, in person, or by attorney, file in the office of the said clerk, a written notice that the granting thereof will be contested, such clerk shall suspend further proceedings in the premises, until the same be heard and determined by the said court, in term time.

Clerk may
issue letters
in vacation.
Subject to
confirmation.

Bond, how
given in vaca-
tion.

15 days to
elapse before
letters issue.

Notice of con-
test of grant
of letters.

SEC. 10. That executors and administrators, appointed in vacation, by the clerk of any probate court, shall take the same oath or affirmation, by the provisions of this act required to be taken by executors or administrators appointed by the probate court in term time; which oath or affirmation, shall be administered by the clerk of the said court, and the granting and issuing of such letters testamentary, or

Oath of exr.
or admr. ap-
pointed in va-
cation.

Effect of
grant of let-
ters in vaca-
tion.

of administration in vacation, and the oath or affirmation of the executors or administrators, appointed thereby, and the proof of last wills and testaments, taken in vacation, shall each, and all, be recorded among the records of the said probate court, as if the same were done in term time by such court.

Preference
given in con-
tested claim
to administra-
tion.

SEC. 11. That if the right to a grant of letters of administration be contested, the widow or next of kin of the intestate or some of them, and creditors, shall, in the order in which they are here named, be preferred; and from the next of kin, in equal degree, the court may select to whom administration shall be granted, taking into consideration, the integrity and ability of the applicants therefor; and if neither the kindred nor the creditors of the intestate, apply for the grant of administration upon the estate of such intestate, the same may be granted to any fit person who will accept thereof.

General pow-
ers vested in
executors and
administra-
tors.

SEC. 12. That from the granting of letters testamentary, or of administration, the executor or administrator thereby appointed, shall be invested with all the powers and rights of the decedent he may represent, so far as it respects the personal estate of such decedent, wheresoever the same may be found in this state, subject to limitations prescribed by law, on account of the trust committed to them, and the duties arising therefrom, and shall have the right, by proper action, to recover the same, and damages for the waste, injury, or detention thereof; and such right shall, in all cases, have relation retrospectively, to the period of the death of the decedent, so as to include all trespasses or injuries against the personal estate of such decedent, committed after his decease; and such executor or administrator shall also have the right to institute and maintain actions of account, trespass, and on the case for goods and chattels of the testator or intestate injured, carried away, or detained in the life time of such testator or intestate.

May sue for
injury or de-
tention of prop-
erty.

May main-
tain account,
trespass, and
case, &c.

Where admi-
nistration, &c.
to be granted.

SEC. 13 That letters testamentary, or of administration, shall be granted in the county of which the decedent, whose estate is to be administered, or will executed, may have been a resident at the time of his decease, except such decedent may have been a transient person, when such letters shall be granted in the county within which such decedent may have deceased, or within which the greater part of his personal estate may be found, at the time of his decease.

Executor, ad-
ministrator or
guardian may
be removed
for cause.

SEC. 14. That if any executor, administrator or guardian, acting under the authority of this court, shall neglect any duty enjoined, or abuse any power hereby conferred, or by removal, imbecility, change of condition, or any other cause whatever, shall in the opinion of said court, be-

come unfit for the exercise of such trust, or if securities are in danger of suffering, by any act or omission of his or their principal, said court is hereby authorized and enjoined, upon the complaint of such securities, or any other person interested, to remove such person from said trust, and appoint a successor or successors, first giving ten days notice of such intended removal, by citation, if the person sought to be removed reside within the state, except in cases where such notice will endanger the rights of the parties. And such person removed from any of the trusts aforesaid, and his securities, shall be liable to account according to law, for all acts in said trusts, and omissions of duty therein, or abuses thereof, to such successor and all others interested therein. And such succession [successor] is hereby invested with full power to call said trustee and his securities to account for their liabilities incurred thereon.

Notice to be given,

Removed representative, shall account.

Successor's powers.

SEC. 15. That any and every executor or administrator, shall, within three months after their appointment to such trust, give notice thereof, by publication in a newspaper printed and published within the proper county, if any there be, and if there be no such newspaper published and printed within such county, then in some newspaper printed and published in some other county in this state, as near thereto as any such newspaper may be found, and in such publication, moreover declare whether the estate entrusted to him be probably solvent or the reverse; and shall also within the same period, make a full and perfect inventory of the personal estate, goods, chattels, rights, credits, monies, and effects, of his testator or intestate, so far as the same may have come to his knowledge, and shall thereafter, from time to time, make further inventories thereof as further knowledge of the personal estate of such testator or intestate may be obtained, which inventories shall be taken and made with the assistance of two respectable freeholders of the neighborhood, who shall be sworn to appraise the goods and chattels contained in such inventories at their fair value, and shall appraise the same accordingly; and such inventory, including as well the rights, credits, monies and effects of the testator or intestate, not proper to be appraised, as the goods and chattels, proper to be appraised, shall be forthwith filed by such executor, in the office of the clerk of the said court, the whole verified by the affidavit of such executor or administrator, and so much thereof as may have been appraised, by the affidavit of the said appraisers, and shall by such clerk be filed among the records in his office.

Notice of grant of administration, &c. how given.

Notice of solvency, or in solvency.

Inventory of personal estate.

Appraisers.

Inventory to be filed, &c.

Affidavit of admr. &c. and appraisers.

SEC. 16. That such executor or administrator, shall forthwith after the making and filing of any inventory as

Personal estate, how sold.

Notice of sale
how given.

aforesaid, sell, at public auction, on a credit of at least three months, when the amount purchased exceeds three dollars, the goods and chattels belonging to the estate of the testator or intestate aforesaid, giving at least three weeks notice of the time and place of such sale, by publication thereof, in a newspaper printed in the proper county, if such there be, and by posting written or printed advertisements thereof, at three of the most public places in the township in which such sale is to be made; and as often thereafter as other inventories may be made, like sales shall be made thereof, upon like notice; and such executor or administrator, shall at all such sales, require purchasers to execute for the amount of their purchases respectively, bonds or notes, with sufficient security for the payment thereof according to the conditions of such sales: and an account of such sales, shall be kept by some suitable clerk, not interested in the estate of such testator or intestate aforesaid, which account, sworn to by such clerk, shall be filed in the office of the clerk of the said court, by such executor or administrator, to be preserved as a record, and for the value of such sales, such executor or administrator, shall be compelled to account: *Provided*, That if the persons executing any notes or bond at said sales, for the amounts of the purchases of individuals, should subsequent to such sale, and before the note or bond so executed may become due or be collected, become insolvent, the said court may, if it be proved by legal and satisfactory evidence, that such executor or administrator proceeded with due caution and care, in taking such note or bond, and in accepting of the security thereto, and that due diligence has been used to collect the sum due, on such note or bond, allow to such executor or administrator, a credit for the amount thereof.

Account of
sales, how
kept & filed.

Executor or
admr. bound
for value of
sales.
Proviso.

Preference in
payment of
claims, vs.
estate.

SEC. 17. That executors and administrators, in making payment of the demands against the estates of their testators or intestates, shall pay the same in the following order, to wit: first, the expenses of administration; second, the funeral expenses of the decedent; third, the expenses of the last sickness of such decedent; fourth, fees of officers, due from such decedent in his life time; fifth, judgments and debts of record: sixth, debts evidenced by obligations, or other instruments of writing; seventh, accounts liquidated or unliquidated, and all other claims and demands not herein enumerated.

Action vs.
exr. or admr.
suspended for
one year.
Claims, how
exhibited.

SEC. 18. That no action shall be brought against any executor or administrator, as such, until after the lapse of one year from the date of his appointment; and in the mean time all persons claiming to have demands against the estate of the testator or intestate, represented by such

executor or administrator, shall file in the office of the clerk of the probate court in which such executor or administrator may have qualified himself to act as such, a statement of their respective claims, describing succinctly the nature and amount thereof; and [any] creditor failing to file such notice within the time aforesaid, shall be barred of any claim to a preference of his demand, on account of the superior dignity thereof, nor shall such executor or administrator, be made answerable to pay such demand out of his own estate, on account of his having paid a debt of dignity inferior to such demand, before such executor or administrator may have had notice of such demand; but such demand shall not be defeated nor postponed, if there be assets in the hands of such executor or administrator, out of which the same can and ought to be paid, at a time subsequent to the expiration of the said term of a year; and if a statement of such claim as aforesaid, be filed in the office of the said clerk, and written notice of the existence of such claim and of the failing [filing] of a statement thereof as aforesaid, in the said office, be also given to such executor or administrator.

Creditor failing, to be postponed.

SEC. 19. That so soon as any executor or administrator, may discover that the personal estate of the decedent whom he may represent, is insufficient to pay the debts and demands, outstanding against the same, or to discharge any money, legacies bequeathed by the will, the execution of which may have been entrusted to him, or to complete payments upon any lands purchased by the decedent, and remaining unpaid for, in part, or entirely, he shall proceed to take an inventory of the real estate of such decedent, whether held by legal or equitable title, or so much thereof as may be necessary to discharge any such outstanding debts and demands, and the legacies and payments aforesaid, in the manner herein above prescribed for the taking of an inventory of personal estate, causing the same to be appraised in the manner herein above prescribed for the appraisement of personal estate, and file such inventory and appraisement in the office of the clerk of the said court granting such letters testamentary, or of administration; and thereupon, on the suggestion of such executor or administrator, or creditor or legatee of the said estate, that the said personal estate is sufficient [insufficient] as aforesaid, the heirs and devisees interested in the real estate so as aforesaid inventoried and appraised, shall be summoned, if residents of this state, or if non-residents thereof shall be notified by three successive publications in a newspaper printed and published in the county, in the court of which the aforesaid suggestion may have been made, if any there be, or otherwise in the newspaper printed and published in

If personal estate is insufficient, real estate may be sold, and how.

Inventory of real estate.

Inventory to be filed.

On suggestion, heirs, &c. to be summoned.

Non-resident heirs, &c. how notified.

Sale of real estate, how decreed.

Avails of real estate made assets.

Further bond required of admr &c.

Conveyance, how made to purchaser.

Effect thereof as to liens.

Holder of lien to be made a party, & summoned.

Or notified.

What contracts may be

this state nearest thereto, to appear in the said court on a day to be named in such summons or publication, and shew cause, if any they can, why such real estate shall not be sold and made assets for the discharge of the debts, demands, legacies or payments aforesaid: And if after thirty days notice, by the service of the said summons, or sixty days notice by the making of the publication aforesaid, the said heirs and devisees fail to appear, or appearing, fail to shew cause as aforesaid, the court shall order and decree a sale of the said real estate, or of so much thereof as may be necessary for the discharge of the debts, demands, legacies and payments aforesaid, and from time to time, such and so much of the said real estate as may be necessary for the purposes aforesaid, shall be made assets in the hands of the said executor or administrator under the provisions of this act, the administrator or executor aforesaid previous to the rendition of any decree, or order for any such sale, filing in the office of the clerk of the said court, such further and additional bond with security as the court may require; and after such sales shall have been made and confirmed by the court, and not before, a conveyance, transfer, or assignment shall be executed to the purchaser or purchasers thereof, in such manner as the court shall order and direct; and when such sale shall have been made and confirmed as aforesaid, all liens upon or against the real estate, so sold as aforesaid, made or suffered by the decedent in his life time, and not specially excepted [and] provided for by the order or decree directing such sale, shall be held to be extinguished by such sale: *Provided*, That the holder of such lien be made a party to the proceeding instituted as aforesaid, for procuring the order or decree as aforesaid for such sale, by being summoned, if a resident of the state, in the manner above in this section provided for the summoning of the heirs and devisees aforesaid, and if a non-resident of the state, by being notified of the pendency of the application aforesaid, for the sale as aforesaid of such real estate, by a publication in a newspaper printed and published in the county in which such application and proceeding shall be pending, if such there be, or otherwise in a newspaper printed and published in this state nearest thereto, notifying him by name, and as a party to such proceeding, of the pendency of such application, and of the term of the court, and time at which and when the same will be heard in the said court; which publication shall be made at least three weeks successively, and thirty days or more before the time of the final hearing and determination of such application.

SEC. 20. That written contraccis, executed in the life time of a decedent, and payable to him, obligating the person or persons executing the same, to the performance of any duty,

contract or matter whatever, other than the payment of money, may, if it shall be for the benefit of the estate and of the creditors, heirs or devisees thereof, be appraised and sold in the same manner above prescribed for the appraisal and sale of goods and chattels, and when sold may be assigned over to the purchaser or purchasers thereof, by the executor or administrator of the estate to which they may have belonged, at the risk of such purchaser or purchasers, and without any recourse against such executor or administrator, either in his individual or judiciary [fiduciary] capacity, or against the estate of such decedent, or the heirs or devisees thereof.

sold & assigned by exr. or admr.

SEC. 21. That upon suggestion made by an executor or administrator, that any claim, debt or demand whatever, belonging to the estate in his hands to be administered, and accruing in the life time of the decedent, represented by such executor or administrator, is desperate, on account of the insolvency or doubtful solvency of the person or persons owing the same, or on account of some legal or equitable defence which such person or persons may allege against same, or for the cause that the smallness of such claim, debt or demand, and the difficulty of finding the debtors, owing to the remoteness of their residence, or such executor's or administrator's ignorance of the same, the said court may order such claim, debt or demand, to be compounded, or to be filed in the said court for the benefit of each [such] of the heirs, devisees or creditors of such decedent, as will sue for or recover the same, giving the creditors the preference, if they or any of them apply for the same, at any time before the final settlement of such estate. And if such claim be compounded, such executor or administrator, shall be chargeable with the avails of such compounding, and if the same be taken by any of the said creditors, heirs or devisees aforesaid, he, she or they, may maintain an action for the recovery thereof, in the name of such executor or administrator, for his, her or their own use, and upon recovering the same or any part thereof, he, she or they, shall be chargeable therewith, after deducting his claim or distributive share, with reasonable compensation for collecting the same, and upon such suits the executor or administrator shall not be liable for costs.

Desperate debts, &c. may be compounded by exr. or admr.

In compounding creditors shall have preference. Executor or administrator chargeable with avails. Assignee may sue thereon.

Effect of recovery, of such demand.

SEC. 22. That whenever any executor or administrator, shall discover that the real and personal property of any decedent which is or may be made assets in his hands, to be administered according to law, will not pay and satisfy the debts and demands outstanding against the estate entrusted to his administration, he shall forthwith proceed to make such real estate assets, for the payment of the said debts and demands, by instituting and prosecuting proceedings for

Insolvent estate, how settled.

Real estate to be made assets.

Complaint to
be filed.

Court or
judge shall
order credi-
tors to be no-
tified, &c.

Publication
to be made.

No suit to be
brought vs.
admr. &c. un-
less for fraud,
&c. after com-
plaint filed.

If complain-
ant fails to es-
tablish fraud,
&c. he shall
pay costs.

Execution vs.
admr. &c. to
be recalled.

that purpose, under and according to the provisions of this act, if the same shall not have been previously done, or by prosecuting such proceedings to final effect, if the same be pending, and shall also forthwith after such discovery, file in the court by authority whereof he may have been appointed, in term time, or in the office of the clerk thereof in vacation, his complaint stating clearly and succinctly the condition of such estate, both real and personal, and the appraised value thereof, the amount of debts and demands outstanding against such estate, so far as the same may have come to his knowledge, and that such estate, real and personal is insufficient to pay the same, and praying generally for relief; and thereupon the said court in term time, or the judge thereof in vacation, shall cause an order to be entered upon the records of said court, directing the creditors of such estate to be notified of the failing [filing] and pendency of such complaint, by a publication for six weeks successively, in a newspaper printed and published in the county in which such complaint may be filed, if any there be, and otherwise in the newspaper printed and published in this state nearest thereto, and further, that unless such creditors notify such executor or administrator, of the existence and extent of their respective claims, by filing the same, or a statement of the nature, description and date of the contract or assumpsit upon which the same may be founded, in the office of the clerk of said court, previous to the final distribution of the assets of the estate of said decedent, such claims aforesaid will be postponed in favor of the claims of the more diligent creditors; which publication such administrator or executor, shall cause to be made forthwith, according to the said order of the court or judge aforesaid. And from the date of the filing of the said complaint, no suit or action shall be brought or sustained, against such executor or administrator, unless waste or negligence or fraud in the discharge of the duties of his trust, as such, be alleged against such executor or administrator; and if any such suit or action be brought after the filing of such complaint, the plaintiff, complainant or claimant alleging such fraud, negligence or waste, and such plaintiff, complainant or claimant shall fail, upon the trial thereof, to establish such fraud, negligence or waste, against such executor or administrator, such plaintiff, complainant or claimant, shall pay the costs of such suit or action, although he may recover a verdict, decree or judgment, against such executor or administrator, for which costs such executor or administrator shall have judgment. And any execution which may have issued out of the said probate court, against such executor or administrator, to be levied only of the estate of the decedent, in the hands of such executor or administrator, shall be recalled by a su-

persedeas to be issued by the clerk of the said court, and no further execution shall be done, on any decree or judgment outstanding in the said court, against such executor or administrator, to be levied of the estate of the said decedent in his hands. And at the term of the said court, holden next after the making of the publication above in this section provided for, and at any or as many succeeding terms as may be judged necessary by the court, such administrator or executor, having proved in said court, the making of the publication above directed, all such claims and demands against the estate, in the hands of such executor or administrator, as may have been filed in the office of the clerk of the said court, shall be finally heard, acted upon and determined by the said court, according to legal, oral or written evidence, or depositions taken on reasonable notice of the time and place of taking thereof, such executor or administrator having a right to examine the claimant under oath, touching the justice of his demand; and upon such final hearing of the said demands, the court shall allow or disallow the same, in whole or in part, as to him may seem just and right, either party having a right to demand a trial by jury, if the sum in controversy shall exceed twenty dollars, and such decision shall be final except upon appeal or writ of error. And after the estate in the hands of such executor or administrator, to be administered, shall have been converted into money, such executor or administrator, shall pay the same into court, and the same shall continue [constitute] a fund for the payment of demands against the said estate, in the following order and manner, to wit: first the expenses of administration; second, the funeral expenses of the decedent; third, the expenses of the last sickness of the decedent, all of which shall be first fully paid; and fourth, all other debts and demands against such estate, without regard to their dignity, each creditor being entitled to his equal share of the same, in proportion to the extent of his demand, as the same may have been allowed in the said court, under the provisions of this section; and all other demands not being filed, as above directed for allowance, being finally and forever postponed and defeated: *Provided*, That nothing in this section contained, shall be construed to defeat any lien created or suffered in good faith by such decedent in his life time, against any portion of his estate, and remaining unsatisfied and unextinguished; but such lien shall first be satisfied out of the estate bound thereby, if the same be sufficient, and the residue of the proceeds thereof shall constitute a part of the fund above directed to be paid into court, for distribution among the creditors aforesaid; and if the estate bound by such lien, be insufficient to satisfy the same, the creditor in whose favor such lien may have been created or

Final decree,
how made,
and claims
how adjusted.

Trial by jury.

Order of distribution of insolvent estates.

Liens to be first paid.

suffered, shall, as to the residue of his claim, be left unsatisfied, after having exhausted the estate bound thereby, stand on an equal footing with the general mass of the creditors of the said estate, and by filing the residue of such demand, in the office of the clerk of the said court, and procuring the same or part thereof to be allowed under the provisions of this section, shall be entitled to his equal share, in proportion to the said unsatisfied residue of the said claim, of such portion as [may] remain of the fund above directed to be paid into court for distribution, after other demands of superior dignity, according to the provisions of this section, shall have been paid and discharged.

Distribution of a solvent estate, how made.

Widow, &c. may be summoned, in distribution.

Widow, &c. shall answer. Proof.

Widow, heirs, &c. may file petition for shares. Administrator, &c. shall answer. Trial.

Heirs, &c. to answer as to advances.

SEC. 23. That after the lapse of one year from the taking out of the letters testamentary or of administration, and after the payment of all creditors, and of the charges and expenses of administration, the executor or administrator of a solvent estate, shall make distribution of the residue of the assets, monies and effects remaining in his hands, according to the last will and testament, the execution of which may have been committed to his charge, or if there be no such will, according to the law of this state regulating descents and distribution; and such executor or administrator, may cause the widow and known kins [heirs] or legatees of the decedent he represents, to be summoned to answer in the said court, of and concerning such distribution, by filing a petition in such court, setting forth any matters necessary for his justification, to be answered to by such widow, heirs or legatees, or to be determined by said court, and such petition shall be answered by such widow, heirs or legatees on oath; and proof on the hearing thereof may be adduced, as to the rights and identity of such widow, heirs or legatees, which proof shall consist of oral or written legal evidence, or of depositions taken upon reasonable notice of the time and place of taking the same; or the widow, heirs and legatees of such decedent or any of them, may file in the said court, their joint or several petition, claiming their respective shares, and such executor or administrator, shall answer thereto, and the matter shall be tried and determined, after twenty days notice to such administrator or executor, by summons or citation, or on his appearance, on proof as [is] above stated, as to identity, and the rights of said parties. And the [in] making decree as to the distribution of the said estate among such heirs, the court shall require those who may have received in the life time of the said decedent, advances of settlements, or portions or parts thereof, to answer as to such advances, and the same shall be charged against such heir, in making the distribution herein provided for. And on making such distribution, the court may require of

the distributees respectively, previous to their respective shares in such distribution being paid to them, to file in the office of the clerk of said court, bond with security, payable to the state of Indiana, conditioned for the refunding of their rateable proportions of the estate distributed to any then unknown heir, legatee or creditor who may afterwards appear; and such bond shall be approved of by the court, and remain on file for the benefit of any such unknown creditor, legatee or heir, who at the time of such distribution, and for five years previous, may have been a non-resident of this state, or who at the said time may have been a minor or insane person. And the decree of the court, in regard to such distribution, obtained or suffered by such executor or administrator in manner aforesaid and in good faith, without fraud, collusion or negligence on his part, shall be conclusive evidence in his favor, and a full justification for any payment made in accordance therewith.

Distributees to give bond to refund, &c.

Decree final, if without fraud.

SEC. 24. That whenever a final settlement of the estate of any decedent shall be made, in the absence of any interested person, such person not having had reasonable actual notice thereof, such absentees shall be permitted to open such settlement, upon bill filed, in the court in which the same may have been made, setting forth clearly and particularly, the items and things complained of, at any time within five years after the making of such settlement, and not afterwards, unless such person be an infant, *non compos mentis*, or without the United States on public business, then in any such case, such person shall be permitted to open said settlement as aforesaid, in one year after such disability may be removed, and not afterwards.

Absentee interested, may open settlement, by bill &c. within five years.

Infant &c. may open within one year.

SEC. 25. That in all proceedings instituted under any of the provisions of this act for the benefit of infants, or in which they may be plaintiffs, complainants or petitioners, such infants shall appear by their guardian at law, or by their guardian *ad litem* appointed by the court to prosecute the matter, and such proceedings, if conducted in good faith, without fraud, shall not be liable to be opened by such infants, on their arriving at mature age; and in all proceedings instituted as aforesaid against such infants, they may appear and answer, either by their said guardian at law, or by guardian *ad litem* appointed as aforesaid, and such infants may open such proceedings, and any decree, order or judgment thereon, any time within one year after they shall arrive at mature age, by filing a petition in the court in which such proceeding may have been had, for a review thereof, and on the final hearing thereof may have decree or judgment thereon, according to right and justice.

Infant may prosecute in P. C. by guardian.

Proceedings by guardian final, in favor of infant.

Proceedings against infants may be opened, &c.

Review in favor of infant.

SEC. 26. That the executors or administrators of the es-

Estates without heir, how disposed of.

After payment of debts &c. to be paid into state treasury.

Also legacies &c. of legatee out of the U. States.

Discovered heir &c. may reclaim his estate.

How to proceed.

Treasurer of state to refund.

Suit vs. administrator &c. for not paying into the state treasury.

Estates without heirs, to be certified by clerk to auditor.

Executor de son tort, how sued.

His liability.

tates of persons dying without any known heirs, and without having disposed of their estate by will, in whole or in part, shall make all the real and personal estate of such decedents not disposed of by will, assets in their hands, by making sale thereof under the order of the probate court, made upon petition of such executor or administrator filed therein, according to the mode of disposing of the estates of persons dying insolvent, above herein provided, and the residue of the estate left, after paying expenses of administration, funeral expenses, charges of the last sickness, and all other demands against such estate, shall be paid into the treasury of state, there to be credited on the books of that office to the unknown heirs of such decedent; and in like manner, a legacy or any other estate of a decedent, belonging or bequeathed to a person known to be a resident without the United States, shall be paid into the said treasury, there to be credited in like manner to such heir or legatee: And any such unknown heir or non-resident heir or legatee, may at any time thereafter, file his petition in the court in which such estate may have been settled, claiming the said estate paid into the state treasury, and on proving himself entitled thereto, the court shall decree the same to be paid to him accordingly; and the treasurer of state, upon the production and filing in his office of a copy of such decree, shall pay the same to the person so as aforesaid entitling himself thereto. And unless the estates aforesaid be paid into the state treasury, as is above prescribed, within ninety days after the expiration of the time allowed by the provisions of this act for the settlement of solvent estates, it shall be the duty of the auditor of public accounts to institute against the defaulting executor or administrator and his securities, suit for the recovery thereof, upon their bond. And to the end that such auditor may have the necessary information to enable him to comply with the above requisition, it is hereby made the duty of the clerks of the several probate courts, to transmit to such auditor such knowledge as they may have touching the situation of estates of decedents dying without a will, and without known resident heirs, or having devised any legacy or estate to a person known to be a resident of parts without the United States, which information shall be transmitted as aforesaid, within thirty days after the expiration of the time allowed as aforesaid for the settlement of such estates.

SEC. 27. That if any person shall unlawfully and without authority, intermeddle with or embezzle any of the goods, chattels, rights, credits, monies, or effects of a decedent, such person shall be chargeable as an executor of his own wrong, and shall be liable to the action as at common law, of the creditors of such decedent or other person injur-

ed by such intermeddling and embezzlement, to the extent of the damages sustained thereby, or such creditor or other person injured as aforesaid may sue such wrong doer, as in chancery, and compel him to make answer under oath concerning the premises, and on the final hearing have decree according to justice and equity.

Creditor may sue wrong doer, as in chancery.

SEC. 28. That any mal-administration, by an executor or administrator, of the assets in his hands to be administered, whereby the same may be lost or rendered less valuable, or diverted to the injury of any creditor or other person entitled in course of due administration to distribution, or any negligence in the discharge of the duties of their trust, shall be denominated waste, and may be alleged as such in any suit or action, against such executor or administrator, or against him and his securities; and such executor or administrator being convicted of such waste, and his securities, shall be liable to answer out of his and their own estates, to any person or persons injured thereby.

Waste, how committed by admr. &c.

Suit for waste vs. admr. &c.

SEC. 29. That if an execution against the goods and chattels of a decedent, in the hands of an executor or administrator, be returned by the proper officer with his return endorsed thereon, that there are no such goods and chattels in the hands of such executor or administrator to be found, the plaintiff in such execution may have a writ of *scire facias* against such executor or administrator for the recovery of his judgment upon which such execution may have been issued, and in such writ of *scire facias* may allege such return, and also that such executor or administrator has wasted the assets in his hands to be administered, by virtue of his appointment as such; and upon the hearing, the court shall render judgment according to equity and law; and if the waste alleged be proved and established judgment shall be rendered payable out of his own estate: Or upon such return made as aforesaid, the said plaintiff in such execution, may institute an action upon the bond of such executor or administrator and his securities, and in such action may allege such return and waste as aforesaid, and have judgment against such executor or administrator and his securities, payable out of his and their own estate, if such waste so alleged as aforesaid be established: But in each of the said proceedings no mispleading or lack of pleading, of such executor or administrator and his securities, or any of them, shall render him or them liable beyond the amount of the assets for which such executor or administrator ought to account; nor shall any judgment by default, *nil dicit*, *non sum informatus* or confession, preclude such executor or administrator, or his securities, from shewing that the assets committed to such executor or administrator, for administration, have been fully administered according to law.

On return of execution, vs. admr. &c. *scire facias* may issue.

Waste may be alleged in *scire facias*.

Judgment, *de bonis propriis*.

Or suit may be brought on bond, alleging waste, &c.

Mispleading, &c. not to pre-judice admr. &c.

Nor judgment by default, &c.

When to issue
scire facias on
judgment
quando, &c.

SEC. 30. That any person having obtained a judgment, against any executor or administrator, to be levied of the assets of a decedent when the same may come to the hands of such executor or administrator to be administered, may have a *scire facias* against such executor or administrator, alleging that such executor or administrator has, since the commencement of the suit eventuating in the rendition of such judgment, acquired or become possessed of such assets, and such proceedings and judgment may be had thereon, as are consistent with law and the rights of the parties: Or such person may sue [out] a *scire facias* against such executor or administrator, upon such judgment, alleging that such executor or administrator has wasted the assets of the estate entrusted to his administration, either before or after the obtaining of such judgment; and such proceedings and judgment may be had thereon, as are prescribed for proceedings and judgment, upon writs of *scire facias*, against executors or administrators in other cases in which waste may be alleged.

Creditor may
sue or admin-
istrator's
bond for fraud
&c.

SEC. 31. That whenever any executor or administrator, shall be guilty of fraud, negligence, or other mal-administration of, or in regard to the estate entrusted to his administration, or shall fail to make a settlement of such estate, within or at the proper time, so that thereby the assets of right belonging to such estate may be in danger of being lost or diminished in value, or may be diverted or withheld from the purposes contemplated by law, or if real or personal estate, or choses in action, may have been, in the life time of a decedent, by him fraudulently conveyed, transferred, or devised with intent to defeat creditors; such creditors or other persons aggrieved, or any one of them who will, may at any stage of the proceedings relative to the settlement of the said estate, institute an action on the bond of such executor or administrator and his securities, or may file a bill in equity, in the probate or circuit court at his election, for the benefit of all other creditors or other injured parties who will exhibit their demands or complaints, and contribute to the expenses of such suit in chancery, making such executor or administrator, the fraudulent grantees, transferees or devisees to whom such estate may have been fraudulently conveyed or transferred as aforesaid, such of the debtors of such estate as the complainant or complainants may choose, or know as such, and all other proper persons, parties thereto; and the court, upon hearing the same, shall decree such relief as may be consistent with justice and equity.

Or file bill in
equity in pro-
bate or circuit
court.
Creditors may
join.

Decree.

Suits may be
sustained on
foreign letters
&c. authenti-
cated.

SEC. 32. That letters testamentary, of administration or of guardianship, granted in any of the states or territories of the United States, or in any foreign country, shall authorize the executor or administrator thereby appointed, to sustain

actions and suits, and to do all acts coming within their powers as such, within this state, upon the same, or copies thereof duly and legally authenticated, being produced and filed with the clerk of the court in which such suits or actions are to be maintained, or within the jurisdiction whereof such acts are to be done. And such guardians, after having filed a copy of their appointment, and given bond and security, under the provisions of this act, shall have all the privileges of resident guardians.

Bond, by foreign guardian.

SEC. 33. That it shall be and is hereby declared to be the positive duty of probate courts, *ex officio*, to compel, by citation and attachment, all executors and administrators, to appear at proper times, and file inventories of estates entrusted to their administration, and on the final settlement of any such estate, to make and file an account current exhibiting a perfect *expose* of all receipts and disbursements, and of the exact amount of the balance in their hands, after deducting the amount allowed by such courts to the said executors or administrators, for their charges and expenses as such; and such final settlement to make without any unnecessary delay.

Probate court shall *ex officio* compel settlements.

SEC. 34. That the letters testamentary by this act authorized to be issued, may be in the following form, to wit:

I clerk of the probate court of the county of in the state of Indiana, do certify the annexed to be a true copy of the last will and testament of , late of the said county, deceased, and that , the executor therein named, hath duly proved the same, according to law, and is duly authorized to take upon himself the administration of the estate of the said testator, according to the said will.

Form of letters testamentary.

Witness my hand and the seal of the said court, the day of in the year of our Lord one thousand eight hundred and .

And letters of administration shall be issued in the following form, to wit:

I clerk of the probate court, of the county of in the state of Indiana, do certify, that administration of the goods, chattels, rights, credits, monies, and effects, which were of , late of the said county, deceased, who died intestate, is granted unto and the said is authorized to administer the same according to law.

Form of letters of administration.

Witness my hand, and the seal of said court, the day of in the year of our Lord one thousand eight hundred and .

SEC. 35. That the appointment by a last will and testament, or by any codicil thereto, of a debtor of a testator, to act as executor of such last will and testament or codicil, shall not hereafter operate to extinguish the debt or demand due from such executor to his testator, at the time of

A debtor appointed exr. shall pay his debt.

the death of such testator, unless so directed by such will or codicil, but such executor shall be liable to account for such debt or demand, whenever the same may be due and payable, as assets in his hands to be administered; and a failure to so account for the same, shall be considered waste of the estate entrusted to his administration, and as a fraud upon the heirs, devisees and creditors interested, and may be alleged as such, in any action, suit or plaint, against such executor, but not against his securities as such executor, for the faithful discharge of his duties as such executor.

Failure to pay
deemed waste.

And suit may
be sustained.

Administra-
tor may enter
on real estate
if heir is ab-
sent.

Shall account
therefor.

Guardian,
when to be
appointed.

Guardian's
bond.

Oath of guar-
dian.

Guardian's
powers, as to
selling proper-
ty.

Inventory,
sale, &c.

SEC. 36. That if there be no heir or devisee of a testator or intestate, present to take possession of the real estate left by such testator or intestate, the executor or administrator entrusted with the administration of the personal estate of such testator or intestate, may, as trustee for the proper heirs or devisees, take possession of such real estate, and take the rents and profits, accounting therefor as for other assets in his hands to be administered, either in the payment of demands against the estate of such testator or intestate, or by paying the same to the proper heir or devisee demanding the same, or by depositing the same in the treasury of state, as the law of the case may require.

SEC. 37. That the said court may, upon application made, or advice or information had, appoint guardians of minors, idiots and lunatics, for the protection of their persons or estates, or both. Such guardian of the person may be appointed in the county in which the minor, idiot or lunatic may principally reside, and such guardian, for the protection of estates in the county within which the same may be mainly situate. And any such guardian, previous to being appointed as such, shall execute bond payable to the state of Indiana, with freehold security to be approved of by the court, in a penal sum amounting to at least double the value of the estate of such minor, idiot or lunatic, conditioned for the faithful performance of the trusts of such guardianship, which bond shall be filed in open court. Such guardian shall also be sworn in open court, to the faithful discharge of the trusts devolving upon him as such.

SEC. 38. That every guardian shall have full power to dispose of the personal estate of the minor, lunatic or idiot committed to his charge, for the care, education and sustenance of such infant, or for the care and sustenance of such lunatic or idiot, and for the general advancement and benefit of the estate of such infant, lunatic or idiot; and all sales of such personal estate shall, as to the making of an inventory, the conditions of such sale, and the notice thereof to be given, and as to the filing in the probate court of such inventory, and a bill of such sales, and in all other respects, be made, conducted and effected, as is required of executors,

and administrator, in regard to the disposition of personal estate in their hands to be administered; unless special order of the said court shall have been first made, authorizing a different disposition thereof. And every guardian shall be liable to have his authority and appointment, as such revoked by the said court for any abuse of his trust, and to account to his successor, or to the minor on his coming to full age, or to the lunatic or idiot, on his recovering his reason; which accounting may be enforced against such guardian in his life time, by such proceedings as are in this act provided to enforce the accounting of executors and administrators, or at any time, by action on the bond of such guardian and his securities, and his and their legal representatives, or by suit in chancery to compel the same.

Guardian's
authority,
how revoked.

Shall ac-
count.

Suit vs. guar-
dian.

SEC. 39. That if, upon the application of any guardian of a minor, lunatic or idiot, it shall appear proper and necessary, either for the education or sustenance of such minor, or for the sustenance of such lunatic or idiot, that the real estate of such minor, lunatic or idiot should be sold, or if it should appear that such real estate is sustaining unavoidable waste, decay or injury, or that the same is incumbered by a lien, or held by an equitable title only, a part of the purchase money [thereof] being yet unpaid, or if it should appear that the price of such real estate can be vested in other property, to the manifest advancement of the estate and interest of such minor, lunatic or idiot, the probate court may decree a sale of such real estate in the following manner, to wit: Upon the making of the application for sale thereof, the court shall appoint three disinterested freeholders, who under oath, to be endorsed upon a copy of the order for their appointment, or taken in open court, and entered of record, shall appraise the same, and make out a written report of such appraisement, and return the same into court; whereupon the guardian shall enter into, execute and file in the said court, bond payable to the state of Indiana, with freehold security, to be approved of by the court, in a penalty of double the appraised value of such real estate, conditioned for the faithful application of the monies arising from such sale, under the direction of the court, and for the rendering of an account therefor according to law; and then the court shall order a sale of such real estate, providing in the decree therefor, for reasonable notice of such sale, the credits to be given for the purchase money and the mode of securing the same, and appointing one or more commissioners to effect such sale. Such commissioners shall make report of their doings in the premises to the court, and deposit the avails of the sale in open court, and thereupon the court may confirm such sale and order a conveyance to be made therefor, by the

When guardi-
an may sell
real estate.

Probate court
may direct a
sale of real
estate.

Appraise-
ment.

Additional
bond.

Conditions of
sale.

Commission-
ers' report.
Confirmation
of sale.

guardian or otherwise, according to the usages of courts.

Official bonds, how payable. **SEC. 40.** That the official bonds of executors, administrators and guardians, executed in accordance with the provisions of this act, shall be made payable to the state of Indiana; and a violation, or neglect of any duty, required by law, of any executor, administrator or guardian, shall be deemed a breach of the condition of his bond, and sufficient to render him and his securities liable, by action thereon in the circuit court, to account to any party injured by such violation or neglect for all damages sustained thereby.

Breach of bond.

One recovery no bar.

Scire facias.

And one or more recoveries on such bonds, shall be no bar to other recoveries, but actions may be maintained, and recoveries had thereon, as often as cause of action may accrue against such executor, administrator or guardian, either by action of debt or covenant, or by *scire facias*, upon the first judgment had thereon, which suits and actions shall be in the name of the state of Indiana, and if instituted for the use of any person or persons, body politic or corporate, other than the said state, the same shall be in the name of the said state, on the relation and for the use of such person or persons, body politic or corporate.

For what causes an administrator, executor or guardian may be removed.

SEC. 41. That if at any time, it should appear that letters testamentary, of administration, or of guardianship may have been granted upon insufficient security, or that such security shall have become, or may be likely to become insufficient to secure the performance and discharge of the trust intended to be secured thereby, or that an executrix or *feme sole* guardian, may have married, or be likely to marry; or that any such administrator, executor, executor or any guardian, may be likely to prove insolvent, or if any such administrator, executor, executrix or guardian shall refuse or fail to exhibit inventories, or to render a full and just account of the estates entrusted to them, or waste the same, or fail to make the best application thereof according to law and the order of court, or if any such administrator, executor, executrix or guardian should, because of age, sickness, imbecility of mind, change of residence, actual or intended, or other reason, become less capable to discharge his or her trust, than the well being of the estates or persons entrusted to his or her care may require, or if it should appear that any guardian treats his or her ward cruelly, or with neglect, or if it should appear that any of those trusts have been abused in any way whatever, the probate court in each, and all, or in any of such cases, shall have the power, and is hereby enjoined, upon complaint being made or information acquired in any way, either by sentence to revoke the appointment of such administrator, executor, executrix or guardian, or to cause him or her to be cited to appear in court, and upon a full examination of the premises,

Revocation may be on complaint or information.

take such further security from such administrator, executor, executrix or guardian, as may be sufficient to secure the due performance and discharge of the duties and trusts aforesaid, and any sums of money or estate, already in the hands of such executrix, executor, administrator or guardian. And if such letters testamentary, of administration, or of guardianship should be revoked, a successor in the trusts aforesaid shall be appointed according to law, who may maintain against his predecessor and his securities on his bond or otherwise, any action, suit, bill in chancery or such other proceeding authorized by law, as may be best calculated to secure a recovery of the monies or estate in the hands of such predecessor, or with which he may be properly chargeable, or for the recovery of damages in lieu thereof. And the said probate court shall have power to compel the payment and delivery of such monies or estates to such successor, by attachment and *distress infinite*, of the person and goods of such predecessor.

Successor,
how appointed.
Suit vs. predecessor.

Enforcement
by attachment
or distress,
&c.

SEC. 42. That executors, administrators, trustees and guardians, having money in their hands by virtue of their trusts, may, by order of the probate court, loan the same, upon such security, and for such length of time, as the court may direct; and it shall be their duty to seek occasion so to loan the same, and on failure so to do, shall be held accountable for interest thereon out of their own estates, and in like manner they shall be held accountable if they use such money for their own benefit, or in application to their own business. And if such money be loaned as aforesaid, and the security required by the court be taken, *bona fide* and without fraud, such administrators, executors, trustees or guardians, shall not be held accountable for any loss thereof, unless they should fail in using due diligence to enforce the collection thereof.

Administrators,
executors and
guardians shall
loan money.

When to pay
interest.

Not liable for
money loaned.

SEC. 43. That if any surety to any bond, executed by any executor, administrator or guardian, conditioned for the faithful performance and discharge of the duties and trusts of his appointment, shall discover, or believe that such executor, administrator or guardian is wasting or mismanaging the estate entrusted to his administration or care, whereby such surety may be liable to suffer loss, the probate court may, in its own discretion or upon application of such surety, order and compel such executor, administrator, or guardian, to render an account of his administration or guardianship, and if on such accounting, it should appear that the said complaint is well founded, or if such executor, administrator or guardian should fail, or refuse to render such account, his appointment as such shall be revoked, and a successor appointed, whose duty it shall be, forthwith to institute, for the safety of such surety, all, or any proceeding prescribed

Surety of administrator,
&c. may have
principal removed.

Causes.

Appointment
of successor.

Predecessor
shall account.

Administra-
tor &c. may
compel co-ad-
ministrator,
&c. to ac-
count.

And secure
money in his
hands.

Or be remov-
ed.

Trials of is-
sues in pro-
bate court.

Venire and
jury.

Challenges
allowed.

in this act, against his predecessor, to compel him to ac-
count for the estate in his hands, or to recover the same.

SEC. 44. That if there be two or more executors, ad-
ministrators or guardians, acting jointly, the probate court
may, from time to time, on the application of any one or
more of them, and for good cause shewn, order and compel
every such executor, administrator or guardian, to account
with his co-executor or executors, administrator or adminis-
trators, guardian or guardians, for all assets or estate which
may have come to the hands of such executor, administra-
tor or guardian, as such; and whenever the court may
judge the same necessary, order may be taken to require
such executor, administrator or guardian, to secure the
amounts in his hands as such, by bond executed as other
trust bonds are directed to be executed by this act, and on
the failure of any one so to do, his appointment shall be re-
voked and a successor appointed, whose duty it shall be to
recover out of the hands of such removed executor, admin-
istrator or guardian, the assets or estate in his hands, by the
proceedings authorized by the provisions of this act.

SEC. 45. That in any proceeding, by this act authorised
to be prosecuted in the probate court, in which the parties
may make an issue or issues of fact, or in which according
to the usages and practice of courts of chancery, it may be
proper that an issue or issues of fact be made, the said pro-
bate court shall be authorised to order such issue or issues
to be made, and to be docketed for trial at the term of court
next after the making thereof, and such issues, as well as
all issues of fact, made in the said court, by the averments
of the parties, in which the parties are, by the law of the
land entitled to a trial by jury, having been docketed or com-
ing on for trial as aforesaid, a *venire* shall issue, directed to
the proper officer, directing him to summon a jury of twelve
men to be named therein, chosen by lot by the clerk of said
court, from the regular pannel of the traverse jury, select-
ed for the term of the circuit court of the proper county
then last holden therein, and such jurors, when summoned,
shall be compelled to attend, under the same penalties pro-
vided to secure the attendance of jurors in the circuit
courts; and for their attendance shall receive the same
compensation which, by law is allowed for their attendance
in the circuit courts, payable in the same manner. And if
owing to the non-attendance of jurors or other cause, a jury
to try such issues cannot or may not be obtained in the man-
ner above prescribed, the same or any part thereof may be
summoned as at common law. And the parties to such is-
sues shall be entitled to challenge jurors empannelled to try
the same, in the same manner, to the same extent, and for
the same causes that jurors are and may by law be challeng-

ed in the circuit courts. And decree, judgment, new trial, Judgment.
arrest of judgment or a *venire de novo*, shall be rendered or
awarded upon the verdicts of such juries, according to the
usages and practice of the circuit courts in this state, in si-
milar cases, as the same may be authorized by law.

SEC. 46. That witnesses, necessary for the parties, in the Witnesses in
probate court, may be summoned as they are or may be in probate court,
the circuit courts, and for non-attendance they shall be li- how summon-
able to the same penalties to which they are or may be liable ed.
in the circuit courts, and depositions may be taken for the Depositions.
same reasons, and under the same circumstances, and admit-
ted as evidence under the same rules, as in the circuit
courts.

SEC. 47. The said probate courts are hereby invested with original jurisdiction, in all suits at law, and in chance- General juris-
ry, upon all demands and causes of action, against execu- diction and
tors, administrators, guardians, and their securities and re- powers of P.
presentatives, arising upon any act done, duty omitted, for- courts at law.
feiture incurred, or a liability suffered, in the discharge of
their said trusts, or any of them and those they represent;
and the said courts are also hereby invested with all the pow-
ers, usually exercised by courts at law and in chancery, to And in chan-
carry those powers, usually exercised by courts of law and cery.
in chancery, into full and complete effect.

SEC. 48. That process issuing out of the probate court, Process, how
shall be tested in the name of the clerk of the said court, tested.
and, with the exception of subpœnas for witnesses, shall be
sealed with the seal thereof; writs of summons or of cita- Sealed.
tion, issuing as a matter of course, upon the filing of a peti- Summons,
tion or complaint or otherwise. Writs of scire facias and subpœnas how issued.
for witnesses, shall issue upon the filing of such petition or Scire facias.
complaint or institution of other proceeding, as may be Subpœnas.
required or contemplated by this act, upon the order of the
party having a right thereto. Writs of venire shall be issued Venire.
by the clerk when necessity may require or the court order Attachment.
the same. Writs of attachment shall issue only when order-
ed by the court, and all such process shall be returnable to
the first day of the term next succeeding the issuing thereof,
unless otherwise ordered by the court; and the jurisdiction
of the said court, in regard to the issuing of process, shall
be co-extensive with the state, and the sheriff or other of- Jurisdiction,
ficer of any county in the state, shall receive, execute and as to issuing
return the same, and in all cases, not specially otherwise process.
provided for in this act, if a summons or citation be execut- Duty of sher-
ed upon a party, twenty days before the return day thereof,iffs.
such summoned or cited party failing to appear, shall be li-
able to suffer judgment or decree by default, or to attachment
for contempt, as the case may require, and the usages and
practice of the circuit courts in similar cases warrant.

Service 20
days before
court.

P. courts, have
C. court pow-
ers in enforce-
ing judgments
decrees, &c.
Executions.

SEC. 49. That the probate courts shall have the same power and authority to execute their judgments, orders, and decrees that the circuit courts may have, either by execution of *fieri facias*, *venditioni exponas*, *capias ad satisfaciendum*, or by *attachment*, to be issued, executed and returned, according to the laws of the state regulating such writs issuing out of the circuit courts; and such judgments and decrees of the said probate court shall be subject to the same stay, or replevy of execution, with judgments and decrees of the circuit courts, to be taken in the same way, for the same length of time, and with the same effect; and the said probate court shall order, decree, and enforce the payment of costs according to the usages and practices of the circuit courts.

Judgments,
how replevi-
ed.

Proof of pub-
lication of no-
tice, how
made.

SEC. 50. That all publications of notices, by this act required to be made, either by posted advertisement, or by insertion in a newspaper, may be proved to have been made according to law, or the order of the court, by the affidavit of any disinterested person, to which a copy of the advertisement or publication shall be annexed, and such proof shall be filed among the papers in the cause or matter to which the same may relate.

Record of
causes tried
by associate
judges or cir-
cuit court,
how kept.

SEC. 51. That in all cases in which, according to the provisions of this act, the associate judges of the circuit court of the proper county, may act as a probate court, and in all cases in which, according to the said provisions, any of the proceedings, suits, actions or business, properly cognizable in the said probate court, may be transacted, tried, heard or determined in the circuit court, the record of such matter shall be kept in the proper books of the probate court, and such associate judges, or circuit court shall cause to be entered upon the record a suggestion in relation to each matter so transacted, heard or determined, that the exigency which, by the provisions of this act, confers the jurisdiction of such matter upon such associate judges, or upon the said circuit court, has happened; and such entry shall be conclusive evidence of jurisdiction in all courts and places, except before such associate judges, or before the said circuit court, acting as aforesaid, or upon writ of error, or appeal to, or from their decision in regard to such jurisdiction.

Appeal to su-
preme court.

SEC. 52. That all persons who may feel themselves aggrieved by any decree, judgment or order of the probate court, or of the associate judges, or circuit court, acting as such probate court, may for the purpose of correcting any error complained of, take the same to the supreme court, by appeal or writ of error, in the same way and manner, and subject to the same [laws,] rules and regulations, by and under which judgments and decrees of the circuit courts

are or may be taken to the supreme court, and the supreme court shall have the same power over and jurisdiction thereof, and shall proceed upon and determine the same in the same way and manner, as if the judgment, order or decree complained of had been rendered in the circuit court; and such writs of error, and appeals, and supersedeas thereon, shall be granted in the same manner, and have the same force and effect, as if prosecuted upon or granted to affect a judgment, decree or order of the circuit court: *Provided however*, That it shall be at the election of any person or persons interested, to take up any order, judgment or decree of the probate court, to the circuit court of the proper county, by appeal or writ of error, in the same manner, and under the same rules and regulations, as are prescribed in taking cases from the circuit court to the supreme court. And the several circuit courts shall have jurisdiction thereof, and hear and determine the same according to the usages of courts and the rights of the parties.

Sup. court shall hear and determine appeal, &c.

Proviso.
Party may elect to appeal to C. court.

Jurisdiction of C. court in appeals.

SEC. 53. That the election of any attorney and counselor at law, to the office of judge of the said probate court, shall not disqualify him for practising, in his professional capacity, in any court of law or equity, except in such probate courts, and in cases in the supreme court, which originated in such probate courts.

Attorney at law, acting as P. judge may practice law.

SEC. 54. That the judges of the probate courts, shall respectively receive, as a compensation for their services, the sum of three dollars per day for the time necessarily devoted to the discharge of their duties; to be paid out of the state treasury, and audited by the auditor of public accounts semi-annually, upon such judge or his agent, producing the certificate of the clerk of the court, whereof he may be judge, stating the number of days such judge may have acted in his judicial capacity; and associate judges, acting as a probate court shall each receive one dollar and fifty cents per day, payable out of the state treasury, and to be certified, audited and paid as aforesaid, but such associate judges, acting as aforesaid, shall receive no compensation out of the county treasury.

Compensation of probate judge.

How paid.

Associate judges acting as P. court, how paid.

SEC. 55. That the probate courts shall hold their terms in each county, on the first Mondays in January, March, July and September, and the third Mondays in May and November, except [that] in counties in which the boards doing county business hold their sessions on any of the above days, the said probate courts shall hold their said terms on the Thursdays succeeding the said days above named: *Provided*, That if either of the above named times shall happen within the times prescribed by law, for the holding of the circuit court in the proper county, the

Terms of probate courts.

Proviso

Proviso.
Terms in Vi-
go, Knox and
Gibson.

probate courts shall hold their said terms on the Mondays succeeding the termination of such term of the said circuit courts, so interfering as aforesaid: *Provided*, That in the counties of Vigo, Knox and Gibson, the said courts shall hold their terms on the first Mondays in February, April, June, October and December, and the second Mondays in August in each and every year.

Power in will
to sell is a
power to con-
vey.

SEC. 56. In all cases where a power or direction is given in any last will and testament or codicil, to sell real estate, it shall be taken and construed as a power to sell and convey; and an administrator with the will annexed, shall have all the power that the executor appointed by the will would have had, if he had executed the will.

Proceedings
now institut-
ed shall pro-
gress to judg-
ment, &c.

SEC. 57. All suits, pleas, complaints, bills in chancery, petitions and proceedings, which may be pending when this act takes effect, in any of the circuit courts, in any way relating to idiots, lunatics, decedents estates or last wills or testaments, shall progress to final judgment or decree in the circuit court where they were commenced, or are now pending, in the same manner as if this act had not passed; and all probate business shall continue to be done and transacted, as it now is in the several counties, until the probate judge is elected and qualified and ready to act.

P. business to
be done as
now until &c.

CHAPTER XXVI.

An Act relative to Crime and Punishment.

[APPROVED, FEBRUARY 10, 1831.]

Treason.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every person duly convicted of treason, shall suffer death.

Murder.

SEC. 2. That every person of sound memory and discretion, who shall unlawfully kill any reasonable creature in being, and under the peace of this state, with malice aforethought, and be duly convicted thereof, shall be deemed guilty of murder, and suffer death.

Manslaugh-
ter.

SEC. 3. That every person, who without malice, either express or implied, shall unlawfully kill any other [another] person, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for not less than two nor more than twenty-one years, and be fined in a sum not exceeding one thousand dollars.

Burglary.

SEC. 4. That every person, who shall in the night time

break and enter into a mansion house, store house, out house or boat, with intent to commit a felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be imprisoned at hard labour in the state prison, for not less than two, nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars.

SEC. 5. That every person who shall forcibly and feloniously take from the person of another, any money, goods or other article of value, by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for not less than two, nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars. Robbery.

SEC. 6. That every person who shall feloniously steal, take and carry, lead or drive away, the personal goods of another, to the value of five dollars or upwards, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be fined in any sum not exceeding double the value of the goods stolen, and be imprisoned at hard labour in the state prison, for not less than two, nor more than fourteen years, and shall also be disfranchised and rendered incapable of holding any office of trust or profit during life, or for any determinate period. And every person who shall Grand Larceny.

feloniously steal, take and carry, lead or drive away, the personal goods of another, of the value of any sum less than five dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall, if a male, be fined in any sum not exceeding five hundred dollars, and be imprisoned at hard labor in the state prison, for not less than one year, and disfranchised and rendered incapable of holding any office of trust or profit during life, or for any determinate period, or fined and disfranchised, and rendered incapable of holding any office of trust or profit as aforesaid, and imprisoned in the jail of the proper county, for any determinate period of time; or if such convict be a female, she shall be imprisoned in the jail of the proper county, for any length of time not exceeding sixty days, and rendered incompetent as a witness in any court of justice during life, or for any determinate period of time, at the discretion of the jury. And Petit Larceny.

any person, male or female, shall upon a second conviction of petit larceny, in any court within this state, suffer the pains and penalties prescribed for those convicted of grand larceny. If a female.

Second offence punishable as grand larceny.

SEC. 7. That every person who shall buy, conceal or receive, any stolen goods or chattels, knowing the same to be stolen, with intent to defraud the owner, shall upon conviction thereof, be punished as those are punished who are principally guilty. And every person who shall agree to. Receiving, &c. stolen goods.

Compounding felony.

Bonds, notes, &c. considered goods.

Forging and counterfeiting.

and actually compound for any stolen goods, shall upon conviction thereof, be fined in double the value of such goods.

SEC. 8. That bonds, bills, notes and other instruments of writing, shall be considered as personal goods, of which larceny may be perpetrated.

SEC. 9. That every person who shall falsely make, deface, destroy, alter, forge or counterfeit, or cause or procure to be falsely made, defaced, destroyed, altered, forged or counterfeited, or willingly assist in falsely making, defacing, destroying, altering, forging or counterfeiting, any record, deed, testament, will, codicil, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, bank note, post note, receipt for money or property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, acceptance or endorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory or promissory note, for money or property, or any order or draft for the payment of money or property, or any written contract of any nature or kind whatever, or any other instrument in writing whatever, with intent to defraud any person or persons, body politic or corporate; or who shall utter or publish as true, any false, defaced, destroyed, altered, forged or counterfeited record, deed, will, testament, codicil, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, receipt or acquittance for money or property, power of attorney, certificate of a justice of the peace or other public officer, auditor's warrant, treasury note, county order, commission or pardon, acceptance of a bill of exchange, draft or order, endorsement or assignment of any bill of exchange, promissory note for money or property, bond, power of attorney or writing obligatory, or any order or draft for the payment of money or property, any written contract of any nature or kind whatever, or any other instrument in writing, knowing the same to be false, defaced, destroyed, altered, forged or counterfeited, or who shall forge or counterfeit, any gold or silver coin, which now is, or at any time hereafter may be current, or in circulation in this state, or utter, pay or tender in payment, any such false, forged or counterfeited coin, or any bank note or notes, bill or bills, knowing the same to be forged or counterfeit, shall be deemed guilty of forgery, and upon conviction thereof, shall be imprisoned at hard labour in the state prison, for a period not less than two, nor more than fourteen years, and fined, in any sum not exceeding one thousand dollars.

Retaining counterfeiting apparatus.

SEC. 10. That if any person shall knowingly retain in his possession, any die or dies, plate or plates, or other apparatus made use of in forging or counterfeiting any gold or sil-

any coin, which is or may be current and in circulation within this state, or in forging or counterfeiting bank notes, such person shall upon conviction of offending as aforesaid, be imprisoned at hard labour in the state prison, for any period of time not longer than five years, and not less than two years, and be fined in any sum not exceeding one thousand dollars.

SEC. 11. That every person who shall unlawfully and forcibly, have carnal knowledge of a woman against her will, or of a woman child under twelve years of age, shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned at hard labour in the state prison, for any period of time not exceeding twenty-one years, nor less than five years. And in prosecutions for the said offence, proof of penetration shall be deemed sufficient evidence of the commission thereof. Rape. Proof of rape.

SEC. 12. That every person who shall forcibly steal and take, or forcibly and unlawfully arrest any man, woman or child, and carry or convey such man, woman or child, to parts without the state of Indiana, or aid or abet therein, or who shall forcibly and unlawfully take or arrest, or aid and abet in forcibly and unlawfully taking or arresting, any person or persons whatever, with intent to take such person or persons, to parts without the state as aforesaid, without having first established a claim upon the services of such person or persons, according to the laws of this state or of the United States, shall be deemed guilty of kidnapping; and upon conviction thereof, shall be fined in any sum not less than one hundred, nor more than five thousand dollars, and be imprisoned at hard labour in the state prison, for any term of not less than two, nor more than fourteen years. Kidnapping.

SEC. 13. That every person who shall, on purpose and of malice aforethought, unlawfully disable the tongue, put out an eye, slit the nose, [cut or bite off the nose,] ear, lip or other member of any person, with intent to disfigure or disable such person, shall be deemed guilty of malicious mayhem, and upon conviction thereof, shall be imprisoned at hard labour in the state prison, for a term of not less than two, nor more than fourteen years, and fined in any sum not exceeding one thousand dollars. Malicious mayhem.

SEC. 14. Every person who shall wilfully and maliciously burn the dwelling house, out house, barn, stable, boat, water craft, mill, mill house, distillery, still house, manufactory, mechanic's or artificer's shop, store house, building or room occupied as a shop or office for professional business, or printing office of another, or any public bridge, court house, jail, market house, church or meeting house, school house, seminary or college edifice, or building belonging thereto, or other public building whatever, shall be deemed guilty of arson, and upon conviction, be fined not exceed- Arson.

ing double the value of the property destroyed, and be imprisoned in the state prison at hard labour, for a period not less than two, nor more than ten years; and should the life or lives of any person or persons be lost thereby, such offender shall be deemed guilty of murder, and shall suffer death accordingly.

Bigamy.

SEC. 15. That if any person, being married, shall marry again, the former husband or wife being alive, and the bond of matrimony still subsisting and undissolved, such person so offending, shall be deemed guilty of bigamy, and upon conviction thereof may, at the discretion of the jury, be fined in any sum not exceeding one thousand dollars, or be imprisoned at hard labour in the state prison, for any term of time not exceeding five nor less than two years.

Bribery.

SEC. 16. That if any judge or other officer entrusted with the administration of justice, shall take any undue reward to influence his behaviour in office, or if any person shall offer or give any such reward, he or they so offending as aforesaid, shall be fined in any sum not exceeding treble the amount of the sum so offered, given or received, and be imprisoned at hard labour in the state prison, for any term of time not exceeding ten, nor less than two years.

Negligent escape.

SEC. 17. That if any officer, whose duty it may be to have the custody of prisoners charged with, or convicted of any offence against any law of this state, shall negligently suffer any prisoner, so as aforesaid charged with, or convicted of an offence, to escape out of his custody, he shall be fined in any sum not exceeding ten thousand dollars. And if any

Voluntary escape.

such officer, shall voluntarily suffer any such prisoner, so as aforesaid charged or convicted, to escape out of his custody, he shall suffer the punishment and penalties, by law provided against, or incident to the offence with which such escaping person may have been charged, or whereof he or she may have been convicted, at the time of such escape; and if any private person shall effect the escape of

Effecting escape.

any such prisoner, such private person shall in like manner, suffer the punishment provided against or incident to the offence with which such escaping person may have been charged, or whereof he or she may have been convicted, at the time of such escape: *Provided*, That if in either of the two cases last above provided against, the punishment provided by law, against or incident to the offence with which the escaping person may be charged, or whereof he or she may have been convicted, be death, the officer so as aforesaid voluntarily suffering, or the private person so as aforesaid effecting the escape of such person charged or convicted as last aforesaid, shall be fined in any sum not exceeding ten thousand dollars, and be imprisoned at hard labour in

Proviso.

the state prison, for any term of time not exceeding twenty-one, nor less than two years.

SEC. 18. That every person who shall knowingly and designedly, by any false pretence or pretences whatever, obtain from another, any goods, wares or merchandize, bonds, bills of exchange, bank notes, or any securities or orders for the payment of money, or transfer of goods, or any valuable thing, with intent to defraud such person, shall be fined in any sum not exceeding double the value of the property, amount or value so obtained, and be imprisoned, at hard labour in the state prison, for any term of time not less than two, nor more than seven years.

Obtaining goods, &c. by false pretences.

SEC. 19. That every person who shall alter the mark or brand, of the horse, mare, gelding, mule, ass, sheep, goat, neat cattle, or hog of another, or mark or brand the same, with intent to steal such horse, mare, gelding, mule, ass, sheep, goat, neat cattle, or hog, shall, if the value of the animal or animals so marked be five dollars or upwards, be subject to the punishment inflicted on those guilty of grand larceny; and if the value of such animal or animals, be less than five dollars, such person shall be subject to the punishment inflicted on those guilty of petit larceny.

Altering brands, marks &c.

SEC. 20. That every person who may give or accept a challenge to fight a duel, or who shall agree to go out of this state, for the purpose of fighting a duel, or who shall knowingly carry to another person, a challenge to fight a duel, shall upon conviction thereof, be fined in any sum not exceeding two thousand dollars, and be imprisoned, not exceeding one year in the jail of the proper county.

Giving, accepting or carrying a challenge.

SEC. 21. That every person who shall actually fight a duel, shall on conviction thereof, be fined in any sum not exceeding five thousand dollars, and be imprisoned, in the jail of the proper county, for any term of time not exceeding one year; and should either party to a duel be killed, the survivor shall be deemed guilty of murder, and shall suffer death.

Fighting duels.

Killing in a duel, murder.

SEC. 22. That every person, who having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter, in which by law an oath or affirmation may be required, shall under or upon such oath or affirmation, swear or affirm, wilfully, corruptly and falsely, touching a matter material to the issue or point in question, shall be deemed guilty of perjury; and every person who shall suborn, cause or procure another person to swear or affirm as aforesaid shall be deemed guilty of subornation of perjury; and every person guilty of perjury, or of subornation of perjury as aforesaid, shall be fined in any sum not exceeding one thousand dollars, and be imprisoned at hard labour

Perjury.

Subornation of perjury.

in the state prison, for any term of time not exceeding twenty-one, nor less than two years.

Perjury, in voluntary affidavits.

SEC. 23. That every person who shall wilfully, corruptly and falsely, before any justice of the peace, or other officer authorized to administer oaths, under oath or affirmation, make any false certificate, affidavit or statement of any nature, or for any purpose whatever, shall be deemed guilty of perjury, and upon conviction thereof, shall be liable to the punishment and penalties prescribed in the twenty-second section of this act.

Requisites in indictments for perjury.

SEC. 24. That in indictments for perjury, it shall be sufficient to set forth the substance of the offence charged, and by what court, officer or authority, the oath alleged to have been taken was administered, averring such court or officer to have had competent authority to administer the same, together with the proper averment or averments to falsify the matters whereof the perjury or perjuries charged therein may be assigned; without setting forth the bill, answer, information, indictment, or any part of the record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court or officer, before whom the perjury may be alleged to have been committed.

Assaults with intent to ravish, murder, &c.

SEC. 25. That every person who shall perpetrate an assault, or an assault and battery with intent to commit a rape, murder, robbery, or other felony, shall upon conviction thereof, be imprisoned at hard labour in the state prison, for any term of time not exceeding fourteen, nor less than two years, and be fined in any sum, not exceeding one thousand dollars.

Assault and battery.

SEC. 26. That every person who shall, in a rude, insolent or angry manner, unlawfully touch, strike, beat or wound another, shall be deemed guilty of an assault and battery, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment, for any term of time not exceeding six months.

Affray.

SEC. 27. That if two or more persons, shall by agreement fight in any public place, to the terror of the citizens of this state, the persons so offending shall be deemed guilty of an affray, and upon conviction thereof, shall be fined in any sum not exceeding twenty dollars, or imprisoned for any term of time, not exceeding five days each.

Unlawful assemblage.

SEC. 28. That if three or more persons shall assemble together to do an unlawful act, and separate without doing the same or advancing towards it, they shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

SEC. 29. That if three or more persons shall meet together to do an unlawful act, upon a common cause or quarrel, and make advances towards the commission thereof, they shall be deemed guilty of a rout, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or be imprisoned for any term of time not exceeding sixty days each. Rout.

SEC. 30. That if three or more persons shall actually do an unlawful act of violence, either with or without a common cause or quarrel, or even do a lawful act, in a violent and tumultuous manner, they shall be deemed guilty of a riot, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each, and be imprisoned, for any term of time not exceeding three months each. Riot.

SEC. 31. That every person, who shall violently and unlawfully deprive another of the use of any bodily member, or who shall unlawfully and wilfully disable the tongue, or eye, or slit or bite the nose, ear, or lip of another, shall be deemed guilty of mayhem, and upon conviction thereof, shall be fined in any sum not exceeding two thousand dollars, nor less than five dollars, and may be imprisoned for any term of time not exceeding six months, and not less than twenty days. Simple mayhem.

SEC. 32. That every person who shall obstruct the execution of any legal process, or who shall forcibly free any person from legal arrest, knowing such person to be under arrest, shall upon conviction thereof, be fined in any sum not exceeding ten thousand dollars, or be imprisoned for any term of time not exceeding six months. Obstructing legal process.

SEC. 33. That every person who shall maliciously or mischievously, destroy or injure, or cause to be destroyed or injured, any property of another, either real, personal or mixed, or any public property, shall be deemed guilty of malicious trespass, and upon conviction thereof, shall be fined in any sum not exceeding two fold the value of the property destroyed, or of the damage done, and be imprisoned for any term of time, not exceeding twelve months. Malicious trespass.

SEC. 34. That every person who shall cut, box, bore or otherwise injure any tree or sapling, on the land of any other person or persons, or on land belonging to the state, or to any county or township therein, or on any land reserved or granted for the use of schools or seminaries, or without a license so to do from the owner or owners thereof, or from other competent authority, or who, without license as aforesaid, shall take away or remove from any such lands, any timber, stone or other valuable article, shall be deemed guilty of a trespass, and upon conviction thereof, shall be fined in treble the value of the tree or sapling so as aforesaid, or of the property so as aforesaid taken away or removed. Trespass.

Forcible entry and detainer. SEC. 35. That every person who shall violently take or keep possession, of any lands or tenements, with menaces, force and arms, and without authority of law, shall be deemed guilty of forcible entry or forcible detainer, as the case may be. and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

Disinterring corpse. SEC. 36. That every person who shall, without the consent of the near relatives of a deceased person, or without the consent of such deceased person being had in his or her life time, remove the dead body, or corpse of such deceased person from interment, in any public or private burying ground, shall upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Encouraging escape of slaves, &c. SEC. 37. That if any person, without proper authority, shall give to any one owing service in any state or territory within the United States, a certificate or other testimonial of emancipation, or shall knowingly harbor or employ any such one owing service as aforesaid, or held as a slave, who may have come to this state without the consent of his or her owner, or shall encourage or assist any such one to desert or not go with his or her owner, or shall use any violence, or other means to prevent, let or hinder any person, in lawfully recovering any fugitive, slave or person owing service, such person so offending, shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and be liable for damages to any person or persons injured by any of the said acts.

Nuisance. SEC. 38. That every person who shall erect, or continue and maintain, any public nuisance, to the injury of all, or any part of the citizens of this state, shall be fined in any sum not exceeding one hundred dollars. And after any person shall have been convicted of erecting or maintaining any public nuisance as aforesaid, the circuit court may make it a part of the judgment upon such conviction, that such nuisance be removed by the sheriff. And no inquest, proceedings or judgment, under or in accordance with the laws of this state, allowing and regulating the writ of *ad quod damnum*, shall bar any prosecution under this section.

Spurious money. SEC. 39. That if any person shall sign, test, endorse, issue, pass, circulate or exchange, any due bill, promissory note, or note purporting to be a bank note, or other instrument of writing for the payment of money or property, or for the performance of any contract, purporting to be the act of any bank, company, secret society or set of men, other than those whose names may be expressed upon the face of such writing, such person so offending, shall upon conviction thereof, be fined in any sum not exceeding ten thousand dollars, nor less than ten dollars, and shall moreover

be liable to any person injured, to the full amount made payable by such writing: *Provided*, That the provisions of this section shall not be construed to affect any bank, legally chartered, nor any mercantile house, touching any note, or other security executed or issued, in the course of common business, on common paper and in common writing. Proviso.

SEC. 40. That every person who shall be a party to any bond, bill of sale, deed, gift, grant or other conveyance, executed with intent to defraud a creditor or creditors of any just demand, or to deceive or defeat any person or persons, shall be deemed guilty of a fraud, and upon conviction thereof, shall be fined in any sum, not exceeding one hundred dollars, and pay double damages to the party injured by such fraud. And all bonds, bills of sale, gifts, grants and other conveyances or transfers, executed for any of the purposes aforesaid, shall be absolutely null and void: *Provided*, That the discovery or admission of such fraud, made in the answer of a respondent, in a suit in chancery, shall not be used as evidence, in any prosecution instituted under the provisions of this act. Fraudulent conveyances.

SEC. 41. That every person who shall sell any unwholesome provisions, for wholesome provisions, knowing the same to be unwholesome, shall on conviction, be fined in any sum, not exceeding one hundred dollars. Unwholesome provisions.

SEC. 42. That every person who shall erect, keep up, maintain or continue, any mill dam or other artificial obstruction, in or across the bed or channel of any navigable stream or river, the bed or channel whereof may not have been surveyed and sold as land by the United States, shall upon conviction thereof, be fined in any sum not less than three dollars nor more than five hundred dollars, for each and every week such dam or other artificial obstruction, may have been kept up, maintained or continued as aforesaid. Obstructing navigation.

SEC. 43. That if any ferryman, ferry owner, ferry keeper, or keeper of a toll bridge, shall in his own person, or by any agent or person in his employment, demand or receive, any greater fee or sum, for or on account of ferriage, than is or may be established or fixed, by the proper board doing county business, as the rate or rates of ferriage to be received by such ferryman, ferry keeper or ferry owner; or shall neglect to cause the banks of the creek or river, over or upon which the ferry kept or owned by him may be situate, to be kept in good condition and repair, for the passage of men, horses and loaded wagons, or shall fail or neglect to give all due attendance to the ferry or bridge, kept or owned by him, in the day time, according to the laws in force for the time being, for the regulation of ferries or bridges, he shall upon conviction, of any one act of extor- Negligence & extortion of ferrymen.

tion, or neglect aforesaid, be fined in any sum not exceeding forty dollars.

Influencing
jury.

SEC. 44. That every person who shall attempt to influence a jury, by promises, persuasions, entreaties, money, entertainments, or the like, or who, being a juror, shall take gain, or profit, for giving a verdict, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, be imprisoned for any term of time not exceeding six months, and be ever after incapable of serving as a juror.

Malicious
prosecution.

SEC. 45. That if any person shall maliciously, and without probable cause, attempt to cause an indictment to be found against any person or persons; or if two or more persons shall conspire together, to cause an indictment to be found against any person or persons, such person or persons, so sought to be indicted, being innocent, such person or persons so offending, shall be fined in any sum not exceeding one thousand dollars, be imprisoned for any term of time not exceeding six months, and be ever after incapacitated to serve as a juror, give evidence as a witness, or vote at any election.

Barratry.

SEC. 46. That every person who shall frequently excite and stir up quarrels, between or among the citizens of this state, at law, or otherwise, shall be deemed a common barrator, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned for any term of time not exceeding six months.

Usurpation.

SEC. 47. That every person who shall take upon himself, to exercise and officiate in any office, or place of authority in this state, without being thereunto legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars.

Official negli-
gence.

SEC. 48. That any clerk of the circuit court, constable, coroner, sheriff, justice of the peace, or other officer entrusted with the administration of justice, who shall be guilty of manifest and wilful negligence, in the discharge of official duty, to the injury of any person, or who shall, in the administration, or under colour of his office, be guilty of any oppressive act, shall upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Extortion.

SEC. 49. That if any officer shall unlawfully, and by colour of his office, demand or receive any money or thing of value, which may not be due to him, or more than may be due, or before the same may be due, he shall be deemed guilty of extortion, and upon conviction thereof, shall be fined ten fold the amount, so as aforesaid extorted: And in a prosecution under this section, it shall be sufficient to prove the accused an officer, *de facto*.

SEC. 50. That if any clerk of the supreme or circuit courts, shall neglect or refuse to perform, or cause to be performed, any duty required of them by a law of this state, entitled "An Act concerning Clerks," or should any clerk of the said circuit courts fail or neglect to make return, according to law, of any election for representatives to the congress of the United States, or of governor, or lieutenant governor of this state, he shall be deemed guilty of a high misdemeanor, and besides being liable, on conviction thereof, on impeachment, to removal from office, shall moreover, on conviction, upon presentment or indictment in the circuit court, be fined in any sum not exceeding five hundred dollars.

Official negligence of clerks.

SEC. 51. That every trustee or trustees of any county seminary, and any clerk of the circuit court, sheriff, justice of the peace, or other officer, who shall neglect, fail or refuse to perform any duty required of such officer, by the laws in force, for the time being, on the subject of county seminaries, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, nor less than five dollars.

Official negligence of seminary trustee.

SEC. 52. That any person who shall fail or refuse, to deliver a list of his or her taxable property when called on therefor, according to law, to an assessor, having a right to demand the same, shall on conviction thereof, be fined in any sum not exceeding fifty dollars.

Failing to give assessor a list of taxables.

SEC. 53. That any and all unlawful acts, committed by any public officer or other person, and any and every neglect of duty, in any public officer, whereby the revenue, either for state or county purposes may be diminished or defrauded, or whereby the collection or payment thereof, into the appropriate treasury may be prevented, hindered or retarded, shall be deemed a fraud against the revenue, and every officer or other person guilty of any such act, shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

Offences against the revenue.

SEC. 54. That every person who shall, in proper person or by an agent, shew or exhibit any animal or animals, or other natural curiosity, or any wax work or other figures, or any feats in tumbling, rope or wire dancing, for gain, without being licensed according to law, so to shew or exhibit, shall be fined in any sum not exceeding twenty dollars.

Exhibiting shows without license.

SEC. 55. That every person who shall, in proper person or by an agent, vend any merchandize which may not be the product of the United States, without having a license or permit so to do, as is or may be designated and required by law, shall be fined in any sum not exceeding one hundred dollars.

Vending merchandize without license.

Vending spirits without license.

SEC. 56. That every person, not being licensed according to law to vend spiritous liquors by retail, who may barter or sell any spiritous liquor, to be drank in his or her house, out house, yard or garden, or who may barter or sell any such spiritous liquor, by a less quantity than a quart at a time, shall be fined in any sum not less than two, nor more than twenty dollars.

Failing to put up list of tavern rates, &c.

SEC. 57. That if any licensed tavern keeper shall, directly or indirectly, ask, demand or receive, any greater price or higher rates, for any article furnished in the way of his business, than may be fixed and published by him in his schedule of tavern rates, or who shall knowingly neglect, for one whole day, to keep up in the most public room in his tavern, a fair list of the aforesaid rates so by him fixed and published, he or she so offending, shall be fined in any sum not less than five dollars, nor more than fifty dollars.

Carrying concealed weapon.

SEC. 58. That every person, not being a traveller, who shall wear or carry any dirk, pistol, sword in a cane, or other dangerous weapon concealed, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

Adultery.

SEC. 59. That every person who shall live in open and notorious adultery or fornication, shall upon conviction thereof, be fined, if a male person, in any sum not exceeding three hundred dollars, or if a female, be imprisoned for any term of time not exceeding three months.

Lewdness.

SEC. 60. That every person who shall be guilty of open and notorious lewdness, or of any grossly scandalous and public indecency, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

Gaming and betting.

SEC. 61. That every person who shall play at any game or games for money, or other valuable consideration, or who shall bet on the hands or sides of such as do play, at a tavern or place licensed to vend spiritous liquors by retail, or in any out house or appendage of the same, shall on conviction thereof, be fined in any sum not exceeding seventy nor less than ten dollars, and be recognized with sufficient security, for his good behaviour for one year, which recognizance shall be forfeited by a second offence, within the time aforesaid.

Losing or winning money.

SEC. 62. That every person who shall, by playing or betting at, or upon any game or wager whatsoever, either lose or win any sum of money or article of value, shall upon conviction thereof, be fined in any sum not exceeding fifty dollars.

Deceit in gaming.

SEC. 63. That if any person by fraud, circumvention, deceit or evil practice, in playing at cards, dice or other game, or by sharing in the stakes or wager, shall win or

obtain any sum of money, or valuable article, the person so offending shall, on conviction thereof, be fined in any sum not less than five, nor more than one thousand dollars, and be bound, with security, in a recognizance for his good behaviour for one year.

SEC. 64. That every keeper or exhibiter of either of the gaming tables called A. B. C., or E. O. tables, billiard table, roulette, spanish needle, shuffle board, faro bank, or other gaming table or establishment, for the purpose of winning or gaining money, or any other article or property of value, either directly or indirectly, shall upon conviction thereof, be fined in any sum not less than fifty, nor more than one thousand dollars, and be bound in a recognizance, with good security, to his good behaviour, for one year.

Keeping gaming tables.

SEC. 65. That every tavern keeper and retailer of spiritous liquors, foreign and domestic groceries, who shall suffer any game or games, prohibited by this act, to be played in his tavern, ordinary or grocery, or in any out-house appendant thereto, shall upon conviction thereof, be fined in any sum not less than fifty, nor more than two hundred dollars, and shall forfeit his license as a tavern or grocery keeper, and not to be re-licensed for one year from the date of such conviction.

Tavern keepers suffering gaming.

SEC. 66. That if any person shall interrupt, disturb or molest any religious society, or any member thereof, when met, or meeting together for public worship, or shall sell or give away, any spiritous liquors, at any booth, waggon, or open place within one mile of any collection of a portion of the citizens of this state, convened for the purpose of worship, or shall interrupt, disturb or molest any collection of the people convened for any lawful purpose, or shall make any contention or disturbance at any public house, court, election, or other lawful public meeting, such person shall upon conviction thereof, be fined in any sum not exceeding ten dollars, nor less than one dollar.

Disturbing religious societies, &c.

SEC. 67. That if any person or persons, being the owner or owners, occupier or occupiers, of any cave of salt petre, epsom salts, or other caves of like noxious qualities, shall permit the same to remain unenclosed and exposed to the stock, cattle or horses of the neighbourhood, such person or persons so offending, shall be liable to a fine of ten dollars, for every day such nuisance may be continued, recoverable as in other cases; which when collected, shall be paid over to the proper agent for county seminary purposes; and shall moreover be liable in damages, to the party injured by his, her or their stock using the same.

Keeping unenclosed salt petre caves.

SEC. 68. That every person who shall assault another, shall be fined in any sum not exceeding three dollars.

Assault.

Infringement
of ferry rights.

SEC. 69. That every person, other than a licensed ferryman, who may, for fee or reward, ferry any person over any creek or river, within two miles of any public ferry, licensed as such, and established on such creek or river, shall be fined in the sum of three dollars for every offence.

Vending
cards and ob-
scene books.

SEC. 70. That if any person, shall vend or cause to be vended, any playing cards, or any obscene book, pamphlet or print, he shall on conviction thereof, be fined in any sum not less than one, nor more than three dollars for every such pack of cards, book, pamphlet, or print vended.

Breach of sab-
bath.

SEC. 71. That if any person, of the age of fourteen years or upwards, shall be found, on the first day of the week commonly called sunday, rioting, hunting, fishing, quarrelling, or at common labour, works of necessity and charity only excepted, such person shall be fined in any sum not less than one, nor more than three dollars: *Provided*, that nothing herein contained, shall be construed to affect such as conscientiously observe the seventh day of the week as the sabbath, travellers, families removing, keepers of toll bridges attending the same, or ferrymen acting as such.

Proviso.

Selling spirits
on sabbath.

SEC. 72. That every tavern keeper, or other person who may barter or sell any spiritous liquor, to any person on sunday, except to travellers, and in cases of sickness, and every tavern keeper or grocer, who shall sell or give any spiritous liquor at any time to a person under the age of fourteen years without the consent of parent or guardian, shall upon conviction thereof, be fined in any sum not exceeding three dollars.

Or to minors.

Profane
swearing.

SEC. 73. That every person, of the age of fourteen years or upwards, who shall profanely swear, aver, curse or imprecate, by, or in the name of God, Jesus Christ or the Holy Ghost, shall be fined for each offence, not less than one, nor more than three dollars: But the fines imposed upon one person for violations of this section, committed on one day, shall not exceed ten dollars.

Playing bul-
lets, &c. on
road, or in
town.

SEC. 74. That every person, who shall play bullets, along or across any highway, or the street of any town or village, or shall run horses, or shoot at a mark, within the limits of such town or village, or shoot along, or across any such street, shall upon conviction thereof, be fined in any sum not exceeding three dollars.

Abetting
crimes.

SEC. 75. That every person, who shall aid, assist, abet, counsel, encourage, hire, or command any other person or persons, to commit, or in committing any crime or offence, in this act mentioned, shall upon conviction thereof, suffer the same punishments and penalties, above in this act prescribed to be inflicted upon principal offenders.

Punishment
by hanging.

SEC. 76. The punishment of death, in this act prescribed, shall be inflicted by hanging by the neck, at such time.

not less than fifteen days after conviction, as the court may direct.

SEC. 77. That [in] all offences in this act contained to which the affixed penalty does not exceed three dollars, exclusive jurisdiction is given to justices of the peace of the proper county. Exclusive jurisdiction of J. P.

SEC. 78. That all prosecutions in the circuit courts, under this act, shall be instituted upon presentment or indictment, issued by the grand jury of the county within which an offence may have been committed, and the jury enquiring of the guilt of an accused party, shall also assess the amount of fine or other punishment, or penalty to be inflicted upon the offender, unless such punishment be death. And upon a plea of guilty to an indictment, the court receiving such plea, shall assess such punishment, as to the extent thereof. Prosecutions by presentment or indictment. Jury shall assess the fine. Except upon plea of guilty.

SEC. 79. That every person, who may hereafter be convicted of the crimes of murder, treason, rape, arson, man-stealing, or wilful and corrupt perjury, shall ever after such conviction be deemed infamous, and shall be incapable of holding any office of trust, honor or profit, voting at any election, serving as a juror, or giving evidence in any court of justice; and no release, reprieve, or pardon, shall restore such person or persons to the privileges aforesaid. Crimes deemed infamous. Pardon shall not restore.

SEC. 80. That in all cases of conviction of any offence, named in this act, the costs of prosecution shall be included in the judgment rendered against the convict, unless the jury expressly find otherwise. Costs upon conviction.

SEC. 81. That in all prosecutions for any capital offence, each party accused shall have the right to challenge twenty jurors peremptorily, and in all prosecutions for any offence, punishable by imprisonment in the state prison, each party accused, shall have the right to challenge ten jurors, peremptorily; and in all other cases of prosecution, each party accused may challenge three jurors peremptorily, and no more. Challenges to jury.

SEC. 82. That if any person, upon being arraigned upon an indictment, shall stand mute and refuse or fail to plead thereto, the court shall cause the plea of not guilty to be entered for such person, and proceed to trial, judgment and execution, as if such person had pleaded to such indictment, in his own proper person. Trial of culprits standing mute.

SEC. 83. That all criminal prosecutions for offences, the affixed penalty for which is three dollars, or less, shall be commenced within thirty days next after the offence may have been committed, and not after. Limitation of prosecutions.

SEC. 84. That all prosecutions for offences, except those the fixed penalties of which do not exceed three dollars, and except treason, murder, arson, burglary, man-stealing, horse-

stealing and forgery, shall be instituted within two years next after the offence charged therein may have been committed, and not after: *Provided*, That if the person or persons, against whom such prosecution may be instituted, shall not have been an inhabitant, or usually a resident of this state, within and during the said term of two years, such prosecution may be instituted any time within two years next after such person or persons may have become an inhabitant, or usually resident of this state as aforesaid.

Fines, how
replevied.

SEC. 85. That every person convicted of any offence against the penal laws of this state, may entitle himself to a stay of execution, for the fine assessed against him and for the costs adjudged against him, or to a replevy of such execution, for three months from the rendition of judgment therefor, by complying with the same provisions which according to the laws for the time being in force, relative to a stay of execution, or replevy thereof, in civil cases, would entitle him to such stay or replevy, and any recognizance of bail, entered pursuant to the provisions of this section, upon the docket of a justice of the peace, or upon the record of the circuit court, and replevin bonds executed pursuant to the said provisions, shall have the same force and effect, as if the same were entered or executed in a civil case. And nothing herein contained shall authorize the circuit court, or a justice of the peace, to suffer a defendant to go at large until such fine and costs be either paid or replevied.

Effect of re-
plevy.

Defendant in
custody until
fine and costs
are replevied.

Penitentiary
sentence, how
certified to
keeper.

SEC. 86. That when any person shall be convicted and sentenced to imprisonment in the state prison, the clerk of the court in which such person may have been convicted, shall certify a copy of the sentence of the court, and deliver the same to the proper sheriff, or other officer acting as such, who, when he shall deliver such convict to the keeper of the said state prison, shall also hand over to the said keeper the said copy of the sentence of the court, and take from such keeper, a certificate of the delivery of such convict.

Sheriff con-
veying con-
vict, may call
aid.

SEC. 87. That a sheriff, when conveying a prisoner to the state prison aforesaid, shall have the same authority to demand the assistance of any of the people of this state, as if he were acting in his proper county, and all persons shall render to such sheriff assistance, in securing such prisoner, and conveying him or her as aforesaid, under the same penalties prescribed against failing to assist sheriffs in their proper counties.

Penalty for
disobeying.

Female con-
vict to be sent
to county jail.

SEC. 88. That on the conviction of any female, of any offence in this act named, one or all of the penalties whereof is imprisonment in the state prison, it shall and may be lawful for such female, in lieu of such imprisonment in the state prison,

to be imprisoned in the jail of the proper county, at hard labour, under the direction of the jailer.

SEC. 87. That any convict confined in the state prison, who shall escape therefrom, shall on recaption be confined at hard labour, for double the length of time for which such escaping convict was originally sentenced, and it shall be the duty of the judge to inform him thereof at the time of his conviction.

Convict escaping shall serve double term.

SEC. 88. That it shall be the duty of the circuit courts, to make an order fixing the amounts in which each person indicted shall be held to bail, and the clerks upon issuing process against such person, shall endorse, upon the process, a memorandum of the said amount of bail required; and the sheriff, in taking security for the appearance of such indicted person, shall govern himself accordingly, and recognizances, for the appearance of any person accused of offences, taken and acknowledged before a proper officer, shall not be void for the want of form.

Court shall order amount of recognizance to be taken by sheriff.

Recognizance not void for form.

SEC. 91. That whenever any attachment shall issue against any person or persons, returnable to any day beyond the term of the court, at which the same may be ordered, the court ordering the issuing thereof, shall also fix the amount in which the said person or persons shall severally be held to bail, making an order accordingly, and the clerk issuing such attachments, shall endorse a memorandum of the amount aforesaid, and the officer executing such attachments shall take a recognizance or recognizances accordingly, which recognizances shall stand on the same footing with recognizances acknowledged in a court of record, and shall not be void for want of form.

Order of bail on attachment.

Amount to be endorsed by clerk.

SEC. 92. That securities for the appearance of any person or persons, to answer to any offence, or to any attachment, may at any time before final judgment be rendered, upon scire facias issued upon the forfeiture of their recognizances, surrender their principals, either in open court or to the sheriff at any time, who shall be bound to receive such person or persons into custody upon the delivery to him, of a certified copy of the recognizance in which such securities may be bound, and to acknowledge such surrender in writing; and such surrender shall, upon the payment of all costs accruing upon the forfeiture and scire facias, acquit such sureties of the amount of forfeiture incurred.

Sureties may surrender principal.

Terms of surrender.

SEC. 93. That on the trial of any person accused of any offence against the laws of this state, it shall be lawful for a defendant or the court, to require jurors to answer on oath, whether they have formed or expressed an opinion, relative to the guilt or innocence of such accused person, and from the answer to such question and to such others as may be

Jurors shall answer on oath.

asked by the permission of the court, the competency of such jurors shall be determined upon by the court.

This act to be given in charge to grand juries.

SEC. 94. That it shall be the duty of the circuit courts, to give specially in charge to grand juries this act, and so much as may be necessary for such grand juries to refer to, of the laws on the subject of the duties of public officers, revenue, county seminaries, estrays, licensed taverns and groceries, vending merchandize, elections, ferries, fees of public officers and all other laws necessary to be referred to, for a proper understanding of each and all of the provisions of this act.

Neglect of clerk to keep his records in clerks's office.

SEC. 95. Any clerk of the circuit court, who shall refuse or neglect to keep his records and books or any or either of them, whether appertaining to the circuit court, probate court, or board doing county business, in any building previously erected by such board for a clerk's office, or shall neglect or refuse to occupy the same as his office, shall for each day he may so neglect or refuse, be fined in the sum of ten dollars, to be recovered by presentment or indictment, in the proper county.

Injured party competent witness.

SEC. 96. That any person against whom an offence may be committed, shall be a competent witness on the trial of an indictment against the person or persons so offending; and persons of skill may be called upon to testify in prosecutions under this act, or in civil cases, whether any note or notes, bill or bills, are genuine or otherwise, leaving the credibility of such persons to the jury, but three persons at least, shall be required to testify to the same point in such cases: *Provided*, That the single evidence of the cashier of the bank on which any note or bill may purport to be, may be received as competent. All stolen property shall be returned to the owner, or the value thereof may be recovered in any court of competent jurisdiction, by an action of trover and conversion, or other proper action.

Evidence as to bank notes.

Stolen property to be restored.

Firing woods or prairies.

SEC. 97. That if any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods or prairie, or other grounds within this state, other than his own, or shall intentionally permit the fire to pass from his own prairie or grounds, to the injury of any other person or persons, every person so offending, shall on conviction thereof, for every such offence, be fined in a sum not exceeding fifty dollars, and stand committed until fine and costs are paid, and shall be liable to the action of the party injured, for damages which he, she or they may have sustained in consequence of such fire.

Assaulting peace makers.

SEC. 98. If a person declares his intention to part combatants, and when lawfully and in good faith, is engaged in endeavouring to part combatants, or to prevent a fight, if any other person shall wilfully and maliciously commit an assault

and battery, on any person so attempting to make peace, and having declared such intention, such person so offending, shall be fined in any sum not less than five dollars, nor more than is provided by this act for a common assault and battery.

SEC. 99. That if any person or persons, shall knowingly bring within this state, a pauper or paupers, with the intention of making them a charge upon any of the counties in this state, he shall upon conviction, on presentment or indictment, be fined in any sum not exceeding five hundred dollars, and stand chargeable with the support of such pauper or paupers.

Bringing paupers into this state.

CHAPTER XXVII.

An Act for the relief of Insolvent Debtors:

[APPROVED, FEBRUARY 9, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person who is, or may become insolvent and unable to pay his just debts, whether civil process shall have issued against him or not, may obtain relief by filing his petition in writing, in the circuit court of the county where he resides, setting forth the circumstances of his indebtedness; together with such other matters as may be necessarily connected therewith, and praying for relief accordingly; which petition shall be accompanied with a schedule, containing an accurate statement of all debts by said petitioner owing, and of all debts and demands to him due or accruing, together with all property of every kind and description, real as well as personal, by him owned, possessed or claimed, in any way or manner, (except such articles of personal property as may be exempt by law from execution,) and where any real estate shall be inserted in said schedule, the same shall be particularly described and designated by the proper number, metes, bounds, quantity, quality, situation and title, and all and singular his goods, chattels, monies, credits, rights and effects, by a good, sufficient and exact description thereof; and said petitioner shall also at the same time, deliver into court, all monies, bills, notes, bonds, accounts, transcripts of judgments and title papers, together with a sufficient and certain direction how to get possession of all other goods, chattels and effects, set forth in said schedule; which petition and schedule shall be verified by the affidavit of the said petitioner, annexed

Insolvent debtor may file petition in C. court.

Schedule of estate.

Description of real estate.

Debtor shall deliver into court monies, bills, &c. Schedule to be sworn to.

thereto, which may be made and taken before any person legally authorized to administer oaths.

Order of publication.

SEC. 2. That it shall be the duty of the circuit court, to whom such application shall be made, at the time of filing such petition and schedule as aforesaid, to cause an order to be entered up, directing publication of the pendency of such application, which shall briefly and succinctly set forth the object of said petition, and that the said insolvent petitioner will, at the next ensuing term of said court, make application to have the benefit of this act extended to him, and for a final discharge under the provisions thereof; a copy of which order, properly attested by the clerk of said court, said insol-

Publication of notice.

vent petitioner shall cause to be published in some newspaper printed in the county, of which said insolvent petitioner is a resident, or if none such be therein published, then in some such paper published most convenient thereto, for three weeks successively, at least sixty days previous to the next ensuing term of said court, a copy of which printed order of publication and notice, with the affidavit of the editor or publisher of such newspaper appended thereto, that the same has been duly published in his paper as above directed, shall be deemed sufficient evidence of such publication: *Provided*, That at the time of said application, such petitioner shall be allowed to except from his said inventory, and retain the amount of the necessary expense of such publication; and if the petitioner be in custody at the instance of a creditor, he shall thereupon be discharged therefrom.

Affidavit of publication.

SEC. 3. That at the term of such court, succeeding the term at which such order of publication shall be made, upon the production of the requisite proof, by such insolvent petitioner, of the due publication of such order as herein before provided for, it shall be the duty of the court to appoint a suitable person as trustee, for the purpose of accepting a conveyance or assignment from such insolvent petitioner, of all the property, both real and personal, and of all rights, credits, monies and effects, belonging to said insolvent petitioner, as set forth and described in his petition and schedule, who previous to his proceeding to act under the authority of his appointment, shall give bond to the state of Indiana, with sufficient sureties, to the acceptance of said circuit court, in double the amount of the value of the property to him transferred or assigned by such insolvent petitioner, conditioned for the faithful discharge of the duties of his said trust; and it shall also be the further duty of the said court, at the same time, to require the said insolvent petitioner, to take the following oath or affirmation, which shall be administered to him by the clerk of said court, in

Trustee to be appointed.

Trustee's bond.

open court, as follows: "I, A. B. do hereby, in the presence of Almighty God, solemnly swear (or affirm as the case may be) that the schedule by me here subscribed and delivered, contains to the best of my knowledge, remembrance and belief, a full, perfect, just and true account, statement and discovery of all the property, both real and personal, to me belonging, or to which I am in any way entitled, (except so much as is exempt by law from execution) together with all the information within my power for obtaining the same, and all debts or demands of all and every description, whether due or to become due to me, or to any person or persons in trust for me, by bond, note, bill, book account, or otherwise, and of all books and evidences of debt, and title-papers, whereby any money or property now is or may hereafter become due or payable, or any benefit accrue to me, or to my use, or to any person or persons in trust for me, and also a true list of the names of all my creditors, with the sums respectively due from me to them, so far as I can ascertain the same, and that I, or any person or persons in trust for me, have no property, either real or personal, stock, books, bonds, bills, notes, accounts, title-papers or evidences of debt, claim or demand, except those contained in this schedule; that I have not directly or indirectly, sold, lessened, or otherwise disposed of in trust, or concealed, all or any part of my property, either real or personal, money, debt, stock, securities or estate, whereby to secure the same for my own benefit or advantage, and thereby to defraud or deceive any of my just creditors;" which oath or affirmation, being subscribed by such insolvent petitioner in open court, and duly attested by the clerk of said court, shall be filed by him along with such petition and schedule, and shall remain on file among the papers and records of such court, for the information of the creditors of such insolvent petitioner; and such schedule and delivery, together with the said insolvent oath, shall well and truly and to all intents and purposes whatever, vest in the trustee aforesaid, and to his successors or assigns for ever, the right, title, interest, claim and demand, both in law and equity, of the person making such schedule, delivery and oath, to all the property, rights and credits mentioned and set forth in said schedule, in fee-simple, clear of incumbrance, without any further conveyance, transfer, assignment or delivery whatever.

Form of insolvent oath.

Oath to be attested and filed.

Effect of schedule & oath.

SEC. 4. That the trustee to be appointed in pursuance of the foregoing section, shall be fully empowered to determine and adjust all controversies which may arise in the settlement of such insolvent petitioner's affairs, either by suit or suits at law, or in equity, or by arbitration or compromise, as such trustee may deem most advisable; and such insol-

Powers and duties of trustee.

Trustee may
bring suit.

Avails of suits
pending to be
assets.

Dividend,
how made.

Proviso.

Trustee to
give notice of
time of ad-
justing claims.

Proviso.

Creditor fail-
ing to exhibit
claim, not en-
titled to share.
Trustee to dis-
tribute every
six months,
and report
final settle-
ment to cir-
cuit court.

vent petitioner shall in all cases, be entitled to a set off of all demands against any and every creditor having claim against him, and such trustee may institute any suit or suits, for the recovery of any and all debts, dues and demands, which may be transferred or assigned to him as aforesaid, in trust for the use of such insolvent petitioner's creditors; and no suit instituted by such insolvent petitioner, and which shall be pending at the time of the assignment, shall abate thereby, but shall be continued and progress in his name; but if recovery shall be had, the avails thereof shall be assets in the hands of the said trustee, for the payment of the debts of the said insolvent petitioner.

SEC. 5. That the trustee aforesaid, after having collected all the debts, dues and demands, to him assigned, in trust as aforesaid, and after having converted all other property to him assigned, in trust as aforesaid, into money, shall proceed without delay, to make an equal dividend of the same, agreeably to the provisions hereinafter specified, among the creditors who shall have exhibited their claims, in proportion to the amount of their just demands respectively: *Provided*, That the said trustee may retain for his services and expenses, such compensation as the proper court shall adjudge reasonable.

SEC. 6. That the trustee immediately after executing his bond as aforesaid, shall give notice, by publication in some newspaper printed in the county wherein such proceeding may be pending, if any such be printed therein, if not then by advertising the same in some newspaper nearest thereto and by written advertisements posted up in three of the most public places in said county, one of which shall be the clerk's office of said county, of the time and place he will attend for the purpose of receiving and deciding upon all claims against said insolvent petitioner, at which time and place the dividend aforesaid shall be made: *Provided always*, That four months notice at least, shall be given of the time and place of such meeting, by the said trustee; and if any creditor shall fail to exhibit his claim at, or within the time specified in said notice, he shall be entitled to no share in the distribution, and the said trustee shall make distribution of so much of such property, as he may have been able to convert into money, every six months, and so on from time to time, until the whole of such estate shall be distributed, except what is heretofore excepted; and after said trustee shall have made a complete distribution of said insolvent petitioner's estate, according to the directions herein contained, he shall make out and submit to said circuit court, a true report of his proceedings concerning the same, which shall be subject to the inspection of said court for their approval or disapproval; and any creditor or other

person concerned, feeling himself aggrieved by the decision of said trustee therein, may file his exceptions thereto, which shall be submitted to such court for their determination.

Creditor may except to trustee's report.

SEC. 7. On the filing or exhibiting of any petition for the benefit of the provisions of this act, the insolvent petitioner shall first give bond, payable to the state of Indiana, with security to be approved of by the circuit court, or the clerk thereof, if in vacation, or the justices of the peace as the case may be, conditioned that the said petitioner will well and truly assign, transfer and convey all his property for the benefit of his creditors, pursuant to his petition and the provisions of this act, and that he will deliver to the trustee to be appointed, all and singular his personal property in his possession or in execution, and upon his failure or refusal to give such bond, or if given to comply with any of its provisions, his petition shall be dismissed with costs; and any person aggrieved may have his remedy on such bond, to the value of any such property not so assigned, transferred, conveyed or delivered, if his original claim against the petitioner amount to so much, if not, then to the value of such property not so assigned, transferred, conveyed or delivered; and any other creditor aggrieved may have his remedy by writ of *scire facias* or [on] the first judgment on such bond, subject to the aforesaid restrictions.

Debtor's bond to assign.

If bond be not given, petition to be dismissed, &c.

SEC. 8. That after any insolvent petitioner shall have assigned and delivered over all his property as aforesaid, in trust for the use and benefit of his creditors, and shall have been legally discharged agreeably to the provisions of this act, his person shall be forever thereafter privileged from imprisonment for any debt or demand, due or owing by him at the time of filing his petition as aforesaid; but any property he may afterwards acquire, shall always be liable for the payment of such debts.

Effect of insolvent's discharge.

SEC. 9. That if any insolvent petitioner contemplated by this act, shall have directly or indirectly, sold, lessened, concealed, kept back or otherwise disposed of any of his property, rights or credits whatever, thereby to defraud any of his creditors, such insolvent petitioner, on proof of the same to the court, made at any time within three years, shall derive no advantage from his discharge under this act, but the same shall be deemed void, and he on conviction thereof, shall be deemed guilty of perjury and punished accordingly: *Provided*, That on the petition or application in writing, of any person interested, within the time last aforesaid, setting forth any such fraudulent conduct in this section mentioned, such court shall proceed, ten days written notice thereof having been given to the debtor to examine into the same, and on the request of either

When discharge shall be inoperative.

Discharge, how set aside for fraud.

party a jury shall be empannelled to try the matters in said petition or application contained, and if they find any instance of fraud as therein mentioned, the court shall give judgment making null and void such discharge of the debtor's person from execution as aforesaid.

Insolvent, how
discharged
from arrest.

SEC. 10. That where any insolvent person shall in vacation be arrested and held in custody, upon or by virtue of any civil process, whether original, mesne or final, and shall thereupon be desirous of availing himself of the benefit of this act, it shall be lawful for him so to do, by filing his petition and schedule in the clerk's office of the circuit court, of the county in which he resides, under the same regulations and restrictions, as prescribed in the first section of this act; whereupon it shall be the duty of the clerk of such court, immediately to issue a supersedeas to such process, which the sheriff and all other persons concerned are required to obey; and at the next term of said court, they shall cause to be made the order of publication, of the pendency of such application, as required by the second section of this act, and shall in all other respects proceed with such petition and application as if the same had been made to such court in term time.

Sheriff sued
for escape
may plead
this act.

SEC. 11. That if any sheriff or other officer, shall be prosecuted for the escape of any person liberated under this act, he may under the plea of the general issue, give this act and the special matter in evidence.

Prisoner un-
able to support
himself in jail,
how discharg-
ed.

SEC. 12. That when any person who is imprisoned on any process, whether original, mesne or final, shall be unable to support himself in prison, and having made affidavit to that effect before any person authorized by law to administer oaths, the plaintiff shall in such case stand chargeable for his support, and in case the said plaintiff shall fail or refuse, to furnish the means necessary for the reasonable support of such person in prison, it shall be the duty of the jailer immediately to set such person at liberty.

Insolvent may
be interrogat-
ed.

SEC. 13. It shall be lawful for any creditor of such insolvent petitioner, on the final hearing of said petition, by disinterested testimony, to establish fraud on such petitioner, and if such fraud be satisfactorily shewn, the court shall not discharge such petitioner; but if process shall have been issued and superseded, new process may thereupon issue.

Insolvent
debtor in jail
under a jus-
tice's execu-
tion, how dis-
charged.
Petition and
proceedings.

SEC. 14. That if any person shall be taken and charged in execution, issued on any judgment obtained before any justice of the peace, it shall be lawful for any two justices of the peace of the county, upon the petition of the prisoner or prisoners, by warrant under their hands and seals, to require the sheriff, jailer or keeper of the jail of the county in whose custody the said prisoner or prisoners may be, to bring the body or bodies of such pri-

soner or prisoners before them, at the court house on a day certain, together with a list of the several executions with which he or they may stand charged in the said jail; which warrant every such sheriff, jailer or keeper is hereby commanded to obey; and notice shall be given to the party or parties, his, her or their executors, administrators, or agent, at whose suit such prisoner or prisoners shall be in execution, if living within the county; and such prisoner coming before the said justices, shall subscribe and deliver in a schedule of his or her whole estate, and take the following oath: "I, A. B. do in the presence of Almighty God, solemnly swear, (or affirm as the case may be) that the schedule now delivered and by me subscribed, doth contain to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods, money and effects unto me in any wise belonging, and such debts as are unto me owing, or to any person in trust for me, and of all securities or contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or my use, or any person or persons in trust for me; and that I have not, nor have any person or persons in trust for me, any lands, money, stock or other estate, real or personal, in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not directly or indirectly sold, lessened or otherwise disposed of in trust, or concealed, all or any part of my lands, goods, money, stock, debts, securities or estate, whereby to secure the same, to receive or expect any profit or advantage thereof, to defraud or deceive any creditor or creditors to whom I am indebted in any wise whatever; and that I will without fraud or deceit, deliver up and convey to such person or persons as the justices named in my petition may appoint, in trust and for the use of my creditors, all my estate both real and personal, except so much as is exempt from execution;" which schedule being so subscribed in the presence of the justices aforesaid, shall be lodged by them with the clerk of the circuit court of the county, for the information of the creditors of such person or persons.

Notice to party.

Prisoner's oath.

Affidavit to be lodged with clerk.

SEC. 15. Such person having subscribed and delivered in a schedule and taken an oath as aforesaid, shall by order of the said justices, be forthwith discharged, and the said justices shall thereupon appoint a trustee, and proceed to a final determination of the case agreeably to the provisions of this act.

Prisoner to be discharged.

Trustee, how appointed.

SEC. 16. That at the time any insolvent petitioner, whether in the circuit court or before the two justices aforesaid, shall take the oaths of insolvency as prescribed by the third and fourteenth sections of this act, such insolvent petitioner shall,

Insolvent shall answer questions on oath at final hearing.

If guilty of perjury or fraud, shall not be discharged.

in addition to such oath, be required to answer any questions which may be put to him by the court, justices or any creditor, relating to his property or indebtedness; and if on such examination [of] the petitioner [it] shall appear to the satisfaction of said court or justices, as the case may be, that he has been guilty of perjury, in his oath or affirmation aforesaid, or of fraud in making out his schedule aforesaid, his petition shall be dismissed with costs, nor shall he have the benefit of his discharge under the provisions of this act.

CHAPTER XXVIII.

An Act concerning Debtors and their Securities.

[APPROVED, JANUARY 30, 1824.]

Security fearing the insolvency, &c. of his principal, may notify creditor to bring suit.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That when any person bound as security, by bond; bill, note or otherwise, for the payment of money, or performance of a contract, shall apprehend that the principal debtor for whom he is bound, is likely to become insolvent, or migrate from this state, without previously satisfying or discharging such debt, duty, demand or obligation, so that it will become impossible, or difficult for such security, after paying, satisfying or discharging such debt, duty or obligation, to recover the value thereof, from such principal debtor; it shall be lawful for such security, if action shall have accrued, on any such contract as aforesaid, to require by notice in writing, his creditor, forthwith to put the bond, bill, note or other contract, by which he is bound as aforesaid, in suit; who shall within reasonable time, commence an action, and proceed with due diligence, to judgment and execution thereon; and if such creditor, shall fail or neglect to proceed as aforesaid, the said surety shall be discharged from the performance of said contract.

Provisions of this act, to whom extended.

SEC. 2. That the provisions of this act, shall be extended to the heir, executor or administrator of any deceased security, against the creditor or his assignee, executor or administrator, upon his compliance with the first section of this act; but nothing herein contained, shall be construed to extend to the official bonds of public officers, guardians, executors, administrators, or bonds with collateral conditions.

Security having paid the debt of principal, may have judgment on motion.

SEC. 3. That when any security, his heir, executor or administrator, pays or discharges the debt or contract of his principal or part thereof, upon judgment rendered against him, he shall have judgment to recover the value, or amount so paid or discharged, together with interest and costs, upon

motion in the court, where such judgment may have been rendered against such security, his heir, executor or administrator of such principal debtor, his heir, executor, or administrator.

SEC. 4. That in cases where there are two or more sureties to any bond, bill, note or contract, and one or more of such sureties are subjected by judgment of any court, to the payment of the debt or damage, by default of the principal obligor, and such obligor be insolvent, so that the amount or value thereof, cannot be recovered of him, the court before whom such judgment may be rendered, shall upon motion of such surety or sureties, grant judgment that they recover against all and every the other co-sureties, their heirs, executors and administrators, for their and each of their respective shares and proportions of the amount or value of such judgment, with damages and costs.

Proceedings where there are two or more sureties, & principal insolvent.

SEC. 5. That no surety, his heir, executor or administrator, shall be suffered to confess, or suffer judgment by default, so as to distress his principal, if such principal will enter himself defendant to such suit, and tender to such surety, or his legal representative aforesaid, good collateral security, to be approved by the court before whom such suit is depending.

Surety may not confess judgment to the prejudice of his principal, &c.

SEC. 6. That when the special bail of any judgment debtor, shall be damnified by the payment of such judgment, or part thereof, it shall be lawful for such bail, his executor, administrator, or heir, to recover the amount of such payment, with interest and costs, upon motion in the same court, where judgment was rendered against such bail, or his legal representatives, of the said debtor, his heir, executor or administrator.

Remedy in favour of special bail.

SEC. 7. That in all proceedings by motion under this act, ten days notice of such motion shall be given to the person, against whom such judgment is to operate.

Notice.

CHAPTER XXIX.

An Act to regulate Descents, Distribution, and Dower.

[APPROVED, JANUARY 29, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the real and personal estate of any person dying intestate, shall descend to his or her children, or their descendants, in equal parts, viz: to the children of a deceased child, the share of their deceased parent, saving however to the widow, in all cases, her right of dower.

How estates shall descend:

Saving right of dower.

For want of children, or their descendants, how estates to descend.

When paternal line shall inherit.

When maternal.

On failure of paternal and maternal kindred, how to descend.

Proviso.

When estates shall go to the wife, and if no wife, how applied.

Property advanced to heirs, taken into view.

Legitimate & illegitimate children, on same footing.

SEC. 2. If there be no children, nor their descendants, then to the father; and if there be no father, then in equal parts to the mother, brothers, and sisters of such deceased person dying intestate, and to their descendants.

SEC. 3. When any person shall die intestate without issue, having a title to any real estate, derived by purchase with the estate of, or by descent from the father, the mother of such person shall not inherit the same nor any part thereof, if there be living any brother or sister of such deceased person, or any brother or sister of his or her father, or any lineal descendant of either of them, except the right of dower she may have therein.

SEC. 4. When any person shall die intestate without issue, possessed of a title to any real estate, by purchase with the estate of, or by descent from the mother, neither the father of such person, nor any child he may have by any other woman, shall inherit the same or any part thereof, if there be living any brother or sister of the mother of such person, or any lineal descendant of either of them.

SEC. 5. The real and personal estate of persons dying intestate without issue, having no father or mother, brothers or sisters, or descendants thereof, shall be divided into two equal parts, one of which shall go to the paternal, the other to the maternal kindred, in the following order: first to the grandfather, then to the grandmother, and if there be neither, then to uncles and aunts on each side and their descendants: *Provided however*, the widow of such person dying intestate, and having no issue, shall be entitled to all of his personal estate, and to half of his real estate.

SEC. 6. When for want of issue of the intestate, and of father or mother, brothers or sisters, or their descendants, the estate as before directed descends [to descend] in equal parts to the paternal and maternal kindred, shall for the want of such kindred go to the wife, but should he have none, then the estate, or the proceeds thereof, shall be paid into the state treasury, to be applied exclusively to the support of free schools in the several townships of the proper county, in such manner as a future legislature may direct.

SEC. 7. In making dividends of the estate of any person dying intestate, among his or her heirs, any property that any one of them shall have previously received by way of advancement, shall be taken into view, if such person shall apply or claim his or her right of inheritance or distribution.

SEC. 8. There shall be no difference between legitimate and illegitimate children, in the inheriting of property that descends to them through the mother.

SEC. 9. If any man shall marry a woman who has, previ-

ous to her marriage, borne an illegitimate child or children, and shall acknowledge himself to be the father of such child or children, he, she, or they shall be deemed legitimate.

Illegitimate children recognized, &c.

SEC. 10. In the distribution of the personal estate of any decedent, the widow shall be entitled to one third part thereof after the payment of all just debts: *Provided*, that the widow of any decedent may select, at the valuation as contained in the inventory, to the value of one-third of the goods and chattels of such decedent, on giving bond with sufficient security, to account therefor to the creditors, heirs, or legatees, if for the payment of debts, or to equalize the residue of the estate after payment of debts, in its distribution, such accounting shall be necessary. And such widow, over and above the privilege aforesaid, may select, at the time of valuation, one hundred dollars in value, of the personal estate of her deceased husband, for which she shall not be required to account in any manner whatever.

Widow's part of personal estate.

Widow shall give bond to refund.

\$100 to widow absolutely.

SEC. 11. All estates tail are hereby abolished; and any person or persons who may hereafter be seized of any estate tail, by devise or by grant, shall be deemed to be seized of the same in fee simple absolute.

Estates tail abolished.

SEC. 12. That the widow of any person dying intestate, shall be endowed of one full and equal third part of all the lands, tenements, and hereditaments, either legal or equitable, whereof her husband, or any other person to his use, was seized at any time during the coverture; and the dower of such widow shall not be considered as sold or extinguished by a sale of her husband's property, by virtue of any decree, execution, or mortgage to which she may not be a party.

Widow's dower.

SEC. 13. That until such dower shall be assigned, it shall be lawful for her to remain and continue in the mansion house and the messuage thereunto belonging, without being chargeable to pay the heir any rent for the same.

Continue in mansion house until the assignment of dower. Heir neglecting to assign dower, court may appoint commissioners for that purpose.

SEC. 14. That if the heir, or other person having the next immediate estate of freehold or inheritance, shall not, within one month next after demand made, assign and set over to the widow of the deceased, her dower as aforesaid, to her satisfaction, and according to the true intentment of law, or if such heir or other person shall not reside within the county where the major part of the real estate of said decedent lies, or if any of the heirs are minors, unrepresented by a guardian, it shall be lawful for such widow to advertise for three weeks successively in some public newspaper printed in said county, and if none be printed therein, then in the county nearest thereto in which a paper shall be published, at least twenty days previous to the first day of the next term of the circuit court to be holden for said county, that application will be made to said court to ap-

point commissioners to assign and set over to such widow her dower as aforesaid; upon proof of which notice it shall be the duty of said court to appoint three persons as commissioners, resident in the county, disinterested and not allied to the parties, to assign and set over to such widow, her just third part of and in all the lands, tenements, and hereditaments, either legally or equitably belonging to her deceased husband.

Commissioners to assign dower.

SEC. 15. The said commissioners shall, at some convenient time after such appointment, proceed to assign and set off the said dower, having first taken an oath or affirmation before some person duly authorized to administer oaths, faithfully and impartially to discharge their duties; and after the same shall be so assigned and set off by the said commissioners, or a majority of them, they shall make a return thereof, under their hands and seals, to the said circuit court; which, upon being acknowledged by them, or a majority of them, in open court, shall be recorded by the clerk of said court, and shall operate as a complete and effectual assignment of dower.

Make return.

Widow neglecting to apply for dower, the heir may have it assigned.

SEC. 16. In case the widow of such decedent shall fail or neglect to apply for the assignment of her dower, it shall and may be lawful for the heirs of such decedent, or any one of them, to have the same set and assigned, agreeably to the provisions of the preceding section.

Dower may be assigned in a special manner.

SEC. 17. When estates of which a woman is dowable are entire, and when no division can be made by metes and bounds, dower thereof shall be assigned in a special manner, as of a third part of the rents, issues, and profits, to be computed and ascertained by the commissioners aforesaid: and when there are several tracts of land, if the widow shall select any particular tract or parcel of such estate, lying together, in lieu of the dower she may be entitled to in all, the commissioners aforesaid may, if they think proper so to do, set off such tract or parcel to such widow, in full satisfaction of her dower.

Refusal to assign, widow entitled to damages.

SEC. 18. In cases of demand and refusal to assign dower, where there is no minor heir unrepresented by a guardian, the widow shall be entitled to reasonable damages from the heir, or other person as aforesaid, from the time of such demand, to the time of the assignment of her dower.

Waste.

SEC. 19. No person endowed as aforesaid, shall wilfully commit waste, or suffer the same to be done, on penalty of forfeiting that part of the estate, whereon such waste shall be made, or suffered, to him, her, or them, that have the immediate estate of freehold or inheritance, in remainder or reversion; and in case of negligent waste, done or suffered, she shall forfeit such damages as a jury shall assess.

SEC. 20. All tenants in dower, shall maintain the houses and tenements, with the fences and appurtenances, whereof they may be endowed, in as good repair as the same may have been delivered to them, during the term, except natural decay.

Houses, &c.
to be kept in
good repair.

SEC. 21. If a wife leave her husband, and live with her adulterer, she shall be barred forever from her dower; but if her husband become reconciled to her, and suffer her to dwell with him, she shall be restored to her right of dower; and if a husband leave his wife, and live with his adulteress, he shall be barred forever from his right of tenancy by courtesy; but if his wife become reconciled to him, and voluntarily live with him, then he shall be restored to his right aforesaid.

Wife may be
barred of her
dower.

Husband, of
tenancy.

SEC. 22. The said commissioners, shall each be entitled to one dollar and fifty cents per day for their services; and the clerk of the circuit court, the same fees that are allowed by law, for similar services; to be paid by the person or persons applying for the assignment of said dower, unless the court in its discretion should otherwise direct.

Compensa-
tion to com-
missioners.

CHAPTER XXX.

An Act authorizing the Action of Disseisin.

[APPROVED, JANUARY 26, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That in all cases, where a person holds possession of lands, tenements or hereditaments, to the exclusion of the rightful owner, whether such possession be acquired, either by unlawful entry thereon, or by unlawful detainer after lawful entry, the owner of such lands, tenements, and hereditaments shall have his action of disseisin against the wrongful possessor, and shall, in such action, recover the possession thereof, together with damages for the unlawful detention of such possession.

When this ac-
tion will lie.

SEC. 2. That it shall be sufficient for the plaintiff, in such action, to state, in his declaration, the nature of the estate he claims, whether in fee simple, or any lesser estate, and to describe the lands, tenements or hereditaments, with precision and certainty, so as to be distinguished from other lands, tenements or hereditaments, that he was seized or possessed of the premises on a day certain, and that afterwards, on the same day, the defendant entered thereon, disseised the plaintiff thereof, and put him out therefrom, and that he has ever since continued to deforce the plaintiff

Plff how to
declare.

thereof and hold him out therefrom, and that the defendant has taken the profits thereof to himself, and thereupon demand seizin or possession of the land and damages for its detention.

Def't plead
general issue.

SEC. 3. That it shall be sufficient for the defendant to allege, that he is not guilty, as charged in the plaintiff's declaration, and upon issue joined to such plea, it shall be sufficient for the plaintiff to shew, that the defendant is in possession of the premises, and that he has a right to the possession thereof by the law of the land.

Extent of re-
medy herein
provided.

SEC. 4. That the remedy hereby provided, shall embrace all the various remedies known to the common law, for enforcing the delivery of possession or seizin of lands, tenements and hereditaments, to the rightful owner of any title thereto, either possessory or otherwise, and may be used in lieu thereof: and final judgment in an action of disseisin shall be conclusive upon the parties thereto, and shall be a bar to another suit for the same cause upon titles held by them at the time of such judgment.

Who may join
as pl'ffs and
def'ts.

SEC. 5. That landlords and tenants, or persons standing in the relation of landlord and tenant to each other, may join in prosecuting and defending actions of disseisin; and any person, standing in the relation of landlord to any person, against whom an action of disseisin may be brought, shall be admitted to defend said action, upon shewing to the court, that such relation exists.

Process.

When issued.

SEC. 6. That the process, in actions of disseisin, shall be a summons to the defendant, to be issued after filing the declaration, and directed to the sheriff, to be served in like manner, as other summonses are directed by law: and in all cases, the action of disseisin shall be brought in the circuit court of the county, where the premises, in dispute, are situate; but where part of such premises may be situate in one county, and part in another, the circuit court of either county, shall have jurisdiction, at the election of the plaintiff.

Action, where
brought.

Limitation.

Saving.

SEC. 7. That no action of disseisin shall be sustained by any person, who shall not have had right of entry within twenty years next before the commencement of such action, unless such person shall have been, during such time or part thereof, absent from the United States, infant, feme covert, or insane; and the time of such absence, infancy, coverture, or insanity, shall not be reckoned any part [of] the limitation aforesaid, provided such limitation commenced during such inability.

No non-suit,
&c.

SEC. 8. That no nonsuit shall be suffered, in any action of disseisin, by reason that there may too many plaintiffs, if there be one plaintiff entitled to recover thereon.

CHAPTER XXXI.

An Act regulating Divorces.

[APPROVED, JANUARY 17, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the several circuit courts within this state, shall be and they are hereby invested with power and jurisdiction to decree divorces, in the manner hereinafter directed, for the following causes, namely: where either of the parties had a former husband or wife at the time of solemnizing the second marriage; for impotency or adultery; in favour of a husband where his wife shall have voluntarily left his bed and board with the intention of abandonment for the space of two years, or where she shall have abandoned him and lived in adultery, or shall have been condemned for a felony in any court of record in the United States, or in any of the territories thereof; in favour of a wife, where her husband shall have left her with the intention of abandonment for the term of two years, or where he shall have abandoned her and lived in adultery, or shall have been condemned for a felony in any court of record within the United States or any of the territories thereof, or his treatment to her is extremely barbarous and inhuman; and also for any other cause, and in any other case where the court, in their discretion, shall consider it reasonable and proper that a divorce should be granted: *Provided,* That the associate judges in the absence of the presiding judge, shall in no case decree or grant a divorce.

Circuit courts may grant divorce.

Causes of divorce.

In favour of husband.

In favour of wife.

Proviso.

SEC. 2. Any person desirous of obtaining a divorce, who shall have resided within the state twelve months, may file in the office of the clerk of the circuit court, a libel or petition, specially setting forth the cause of his or her complaint, whereupon the clerk shall issue a summons, notifying and requiring the defendant to appear at the succeeding term of the court, to answer the libel or petition; which summons with an attested copy of the libel or petition, shall be served on the defendant, at least fourteen days before the first day of the court, to which the summons is made returnable, and if it shall appear by the return of the officer, on the summons, or at any stage of the cause, by disinterested affidavit, that the defendant is not a resident of this state, the court shall order notice of the pendency of such complaint, and that the defendant appear upon the first day of the next court, to answer the said complaint, or the matters and things will be determined in his or her absence, to be published three weeks successively in some newspaper in the state, at least sixty days before the next term of the court; and the court is hereby invested with all powers necessary to the con-

Libel may be filed.

Summons, how served.

Notice to non-resident defendant.

Notice how published.

Powers of the court.

ducting, and finally determining such cases, according to the true intent and meaning of this act.

Appearance
and pleadings

SEC. 3. Upon the appearance of the defendant, he or she may by general denial, without oath, controvert the allegations of the libel or petition, and may also allege any of the aforesaid, or other good causes of divorce, to apply to the complainant; or if the defendant does not appear personally, or by counsel, and it satisfactorily appears to the court, that the process has been served, or publication made as is required by the foregoing section, the cause shall be set down for trial, but the allegations of the plaintiff shall not be considered as confessed, or proof dispensed with.

No decree but
upon proof.

Divorce, how
decree.

SEC. 4. If on the hearing of the allegations and proofs of the parties, there shall appear to be a just cause for divorce, within the provisions of this act, according to the sound construction thereof, the court shall render a decree, declaring the complainant divorced from his or her husband or wife; and the other party shall be released from the marriage contract, to all intents and purposes, as though the same had never been solemnized.

Intermediate
orders as to
estates, &c.

Husband shall
answer on
oath as to
wife's estate.

SEC. 5. Pending a suit for a divorce, the court may make such temporary orders, relative to the persons or property of the parties, as they shall deem just and equitable, and in their discretion, may compel the husband to disclose on oath, what personal or real estate he has received in right of his wife, how the same has been disposed of, and what proportion of it remained in his hands at the time of filing the libel or petition; and shall have authority to carry their judgments, orders or decrees into effect, as to them shall seem expedient.

Temporary
orders by
judges in va-
cation.

SEC. 6. The circuit judge alone, or the two associate judges together, in vacation, may upon libel or petition filed, supported by oath or affirmation, or upon a supplemental bill filed verified in like manner, make such temporary orders as the court in term time are authorized to make by the preceding section, or for publishing notices to non-resident defendants.

When divorce
is decreed, the
court shall
make division
of the estate.
Proviso.

SEC. 7. The courts respectively pronouncing the decree of divorce, shall regulate and order the division of the estate real and personal, in such way as to them shall seem right and just, having due regard to the legal and equitable rights of each party, and the children if any: *Provided however,* That nothing herein contained, shall be so construed, as to authorize the court to compel either of the parties, to divest himself or herself of the title to real estate.

Proceedings
to be as at
common law.
Prosecuting
attornies shall

SEC. 8. The proceedings by this act authorized, shall be according to the rules of the common law.

SEC. 9. The several prosecuting attornies for the state of Indiana, are hereby directed, and it is made a part of their

official duties, to attend to and oppose the granting of all divorces in the circuit courts of their several judicial circuits. oppose divorces.

SEC. 10. In all cases where divorces have heretofore been granted, by any judgment or decree of a circuit court, or by special act of the general assembly in favor of one of the parties, the other party shall be considered as thereby absolved from all duties, obligations or liabilities consequent to such marriage contract. Divorces heretofore granted, shall operate in favour of both parties.

CHAPTER XXXII.

An Act to regulate General Elections.

[APPROVED, JANUARY 30, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the board doing county business in each of the several counties, at their first meeting in each and every year, shall cause a suitable number of blank forms of poll books and election returns, to be made out (headed and certified as the nature of the case may be) for each inspector in the several townships, which they shall cause to be delivered into the hands of the sheriffs respectively, of said counties, whose duty it shall be to deliver them to the proper persons, at least ten days previous to the next election. City boards shall cause poll books to be given to inspector.

SEC. 2. Each inspector shall, previously to the time of opening the election, take to himself two other qualified voters of his township, who together with himself, shall be judges of elections for such township, during the time such inspector shall be appointed to serve; which judges shall appoint two suitable persons as clerks of such elections. Judges and clerks of election to be appointed.

SEC. 3. Every inspector and judge of an election shall, before such election be opened, be sworn or affirmed that he will faithfully and impartially do the duties assigned him by law, that he will not knowingly permit any person to vote, who is not qualified according to the constitution of this state, nor will he knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote, more than is necessary to give satisfactory information of the qualification of such person as a voter; and if no person present is authorized to administer oaths or affirmations, then one of the judges shall swear or affirm the inspector, and the inspector being sworn or affirmed, shall swear or affirm the other judges; the inspector shall also swear or affirm the clerks of election, faithfully and impartially to discharge their duties as clerks of election. Inspectors, judges, and clerks to be sworn.

Inspector failing to attend, the electors may appoint one.

Elections, when opened & when closed.

Penalty for voting in different districts.

Further duty of the officers of election.

Tickets to be written or printed.

SEC. 4. It shall be the duty of the inspector of elections, to attend at the place of holding elections in his township, on or before nine o'clock of the morning of the day of election, and if no inspector should appear by that time, then the voters of the township present shall appoint an inspector, who shall be governed in all things as is herein directed for inspectors appointed by the board doing county business; and any vacancy that may happen in the appointment of a judge or judges of election, shall be supplied by the inspector as in the first instance.

SEC. 5. All elections shall be opened between the hours of nine and eleven o'clock of the day of election, and continue open until four o'clock in the afternoon of said day, after which hour the judges may close the polls at any time when all the voters present have voted, or had an opportunity of voting, but shall not be compelled to wait more than fifteen minutes without a vote, until they close the polls, nor shall the polls be kept open after six o'clock.

SEC. 6. Each qualified elector may vote once and no more; and if any person shall attempt to vote more than once, or to hand in two or more tickets folded together, or having voted in one township, county or district, shall afterwards go into another on the same day and vote or attempt to vote, every person so offending, shall on conviction thereof, be fined in any sum not exceeding fifty dollars, and shall moreover be rendered incapable of voting or holding any office in this state for the next two years thereafter.

SEC. 7. It shall be the duty of the inspector, before he proceeds to receive any votes, to cause it to be proclaimed aloud, that the election is opened; and when any person offers to vote, the inspector shall call out his name, and if there be no objection to the qualification of such person as a voter of that county, he shall receive his ticket, and in the presence of the other judges, put it into a box to be provided for that purpose, when the name of such person whose ticket is received, shall be again distinctly repeated by one of the other judges in the presence of the clerks, each of whom shall keep a separate list thereof, numbering every name taken down, so that it may be seen at any time whether their lists agree, and if an inspector, judge or clerk of election, shall attempt to pry into or find out the names of any persons on a ticket that is handed in folded, or expose any such vote, he or they so offending, shall be liable to the same penalty as contained in the nineteenth section of this act.

SEC. 8. Every ticket handed in, shall contain the name of every candidate such voter intends voting for, either in writing or print, designating the office to which he wishes each to be elected, and if more persons are designated to

any office, than there are candidates to be elected, such part of the ticket shall not be counted to either of them; but no ticket shall be lost for want of form, if the judges of the election can determine to their satisfaction the person voted for, and the office intended.

SEC. 9. If any difficulty should arise in the course of an election hereafter to be held, in determining on the qualification as a voter, of any person wishing to vote, the inspector of such election is hereby authorized to swear or affirm such person, to answer such questions as may be asked him relating thereto, or any by-stander, and the judges of said election shall decide from the examination, as to the legality of such vote. Electors may be sworn.

SEC. 10. When the polls are closed, or at any time after four o'clock of the afternoon, and the judges are at leisure, they may open the box and commence canvassing the votes, when the tickets shall be taken out carefully, one by one, by the inspector, who shall open them and read aloud the names of each person written or printed thereon, and the office for which every such person is voted for, and shall then hand it to one of the judges, who shall repeat the same, and hand it to the other judge, who shall string it on a thread of twine prepared for that purpose; but no judge or clerk of election shall vote after they begin to count the votes, nor shall they publish a statement of the polls until it is proclaimed by order of the inspector, that the election is closed. Votes to be counted.

SEC. 11. As the inspector shall open and read the tickets, each clerk shall carefully mark down the votes each candidate shall receive, in separate columns prepared for that purpose, with the name of such candidate written at the head thereof, and the office he is voted to fill; but if two tickets are found deceitfully folded together, they shall both be rejected. Certain tickets may be rejected.

SEC. 12. As soon as all the votes shall be read off and counted, the judges of the election shall make out a certificate under their hands, stating the number of votes each candidate received, designating the office for which he was voted to fill; which number shall be written in words at full length; and the certificate, together with one of the lists of voters, and one of the tally papers, shall be put into the hands of one of the judges of election, who shall on the ensuing Wednesday, deliver the same to the clerk of the circuit court, at the court house or place the courts are held, of such county, (or in his absence to his deputy,) who shall, in the presence of all the judges of election who attend from the different townships, between the hours of twelve and four o'clock, compare the different returns, and the persons having the highest number of votes, for all offices to be elected by the voters of that county only, shall be declared

Certificate to be given to the clerk of circuit court.

to be duly elected; and the clerk of the circuit court shall forthwith give them certificates of their election accordingly; but if two or more should be equal in votes, the clerk and judges present shall decide by lot which is elected.

Certificate of election for governor, lieutenant governor, and representatives in congress, to whom made.

SEC. 13. The clerk of the circuit court shall also make out in fair hand, in words at full length, a certificate of the number of votes each candidate for governor and lieutenant governor received, according to such return; which certificate he shall seal up and transmit to the speaker of the house of representatives, as directed by the constitution of this state; and a certificate of the return of votes for a representative or representatives to congress, and of the person or persons elected for sheriff or coroner, shall be forthwith forwarded to the office of the secretary of state. It shall be the duty of the secretary of state, on receiving the returns for representatives to congress, to compare said returns, and certify to the governor, for the time being, the person or persons having the highest number of votes, duly elected, whose duty it shall be, to give such person or persons a certificate of his or their election, attested by the secretary of state.

List of votes to be preserved.

SEC. 14. The list of votes, tally papers, and certificate of judges, which are directed to be forwarded to the clerk at the court house, or place where the courts are held of the county, shall be preserved by said clerk, to be inspected by any person who may wish to examine the same; and the other papers and tickets shall be preserved and kept by the inspector, for the term of six months, for the inspection of any of the voters of the township, who may wish to examine them.

When writ of election to be issued.

SEC. 15. When the seat of any representative to congress, or senator or representative in the general assembly of this state, shall become vacant, the governor for the time being, shall issue his writ of election to the proper sheriff or sheriffs, commanding him or them to proclaim, that on a certain day, to be designated in said writ, there will be an election held to fill such vacancy; due notice of which proclamation, each sheriff shall cause to be given to each inspector of elections in the several townships throughout his county; and such election shall be governed in all respects as general elections are.

Mode of conducting an election where two counties compose one district.

SEC. 16. When two or more counties shall be joined together, to compose one senatorial or representative district, the clerks of the circuit court of each county respectively, shall, on the return day of each election for senator, make out a certificate of all votes received by each candidate for senator or representative, and deliver the same to the sheriff; and the sheriff of each county of such senatorial or representative district, shall meet on the Saturday following,

at the court house of the oldest county in such district, where they shall compare the several certificates, and jointly give the person having the highest number of votes a certificate of his election; but if any two shall be equal and highest in votes, they shall decide by lot which is elected.

SEC. 17. If any person shall use any threats, force or violence, or attempt to awe any voter, so as to restrain him in the freedom of choice, or offer any fee or reward, in meat, drink, or otherwise, in order to persuade any elector to vote contrary to his own mind, or shall, on the day of election, give any public treat, or direct any person to do it on his behalf, with a view to obtain any vote or votes for himself or any favourite candidate, every person so offending shall, on conviction thereof, by presentment or indictment, be fined in any sum not exceeding five hundred dollars, and shall moreover be rendered incapable of holding any office of profit or honour, for the next two years thereafter.

Penalty on those attempting to restrain the freedom of elections.

SEC. 18. The board doing county business, shall provide a sufficient number of ticket boxes, at the expense of the county, for the several inspectors, to be kept by them and delivered over to their successors, from time to time.

Ticket boxes to be provided.

SEC. 19. If any member of the board doing county business, sheriff, clerk of the circuit court, or inspector, judge or clerk of election, shall neglect or refuse to perform the duties enjoined upon him by this act, or having taken upon himself to perform such duties, shall be guilty of fraud and corruption in doing such duties, he or they so offending, neglecting or refusing, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, together with costs of suit, by presentment or indictment.

Penalty on officers of election neglecting their duty.

SEC. 20. Each inspector, clerk or judge of election, shall have credit for one day's work on the public roads, for every day he shall be employed in attending an election.

Compensation to officers.

SEC. 21. The board doing county business shall allow the returning judges of election, a reasonable compensation for their services rendered in compliance with the provisions of this act.

Further compensation.

SEC. 22. If any candidate or elector of the proper county, shall choose to contest the validity of any election, or the right of any person proclaimed duly elected in any county, to his seat in the general assembly of this state, such person shall give notice in writing to the person whose election he means to contest, or leave a written notice thereof at the house where such person last resided, within ten days after such election, expressing therein the points on which the same is contested, and shall also give notice to the inspector, judges and clerks of the township or townships, where such grounds for contesting the election of any can-

Method of contesting election of members of general assembly.

didate may have arisen, as in case of the person proclaimed duly elected, and shall within the same time give notice to the sheriff of the county, who shall thereupon summon the members of the board doing county business of the proper county, who shall be severally obliged to attend, under the penalty of fifty dollars each; the sheriff shall appoint a place and time for the said board to meet within the county, which shall be within twenty days after the election; the said board or any two of them, shall have power to issue subpoenas, and compel the attendance of witnesses to give evidence, under the penalty of fifty dollars, to be levied on each and every delinquent who shall have been duly served with process; and the said board so met, shall hear and certify, under seal, all testimony relative to said contested election, to the speaker of the house of representatives or president of the senate, as the case may be, at their next general assembly.

Who may
contest an
election, and
what testimo-
ny admissible.

SEC. 23. No person shall contest any election, unless he is an elector of that county or district in which the elections are held: nor shall any testimony be received, which does not relate to the points specified in the notice: copies attested and sworn to by the person who delivers or leaves said notices, shall be delivered to the board doing county business at the time of their meeting, and previous to their taking any person's testimony.

How elections
of governor,
lieutenant go-
vernor and re-
presentatives
in congress
shall be certi-
fied and trans-
mitted by
clerks.

SEC. 24. It shall be the duty of the clerks of the several counties, within ten days after the returns of the election of governor, lieutenant governor and representative in congress shall have been received into their respective offices, in the presence of some post master of their counties, to seal up and transmit by mail, to the secretary of state, a certified statement of the number of votes given for governor, lieutenant governor and representative in congress, in their counties respectively, taking from such post master, (if it can be obtained) a certificate setting forth particularly, the time when such statements are deposited in such post offices, which certificate shall be carefully preserved by such clerks, and remain filed in their respective offices; and it shall be the further duty of such clerks, to seal up and transmit by some senator or representative of the proper senatorial or representative district, to the speaker of the house of representatives of this state, a certified statement of the votes so given as aforesaid for the above named offices, whose duty it shall be to deliver the same to the speaker of the house of representatives as aforesaid, on or before the second day of the session aforesaid. And it shall be the duty of the said secretary of state, as fast as he may receive the returns aforesaid, to give a list thereof to some one of the editors of newspapers in Indianapolis, that

Secretary of
state shall
cause list of
votes for go-

the same may be published for the information of the people, and the postage on said returns shall be paid out of the state treasury.

SEC. 25. That if any candidate or elector, shall choose to contest the right of any person declared duly elected governor or lieutenant governor of this state, such contestor shall give notice in writing, to the person whose election he means to contest, or leave a written notice thereof at the house where he last resided, within twenty days after the proclamation of such election, expressing the points on which the same is contested; and shall in like manner, and within the same time, give notice thereof to the presiding officers of each house of the general assembly, who shall forthwith make out a notice in writing and deliver the same to the sergeant at arms of the senate, who shall give a copy thereof to the person whose election is contested, or leave a copy thereof at the house where he last resided, that his election has been contested, and that a committee of the general assembly will meet on some day certain, which shall be fixed on by such presiding officers, to hear and examine the evidence of the parties concerned.

SEC. 26. As soon as the president of the senate and speaker of the house of representatives, shall have received notice of such contest, agreeably to this act, each house shall proceed separately to choose seven persons, members of their own body, in the following manner, to wit: the names of the members of the house of representatives, except the speaker, shall be deposited in a box, and the names of the members of the senate shall be deposited in a box, and it shall be the duty of the secretary of the senate, in presence of the senate, and of the clerk of the house of representatives, in presence of the house, to draw from their separate boxes, the names of seven persons, which persons whose names are so drawn, shall constitute a committee to try the validity of such contested election, and who after being duly sworn, shall in joint meeting, proceed to hear and determine the same.

SEC. 27. The committee aforesaid, when met agreeably to the provisions of this act, shall have power to send for persons or papers, and take all necessary means to procure testimony, the same privilege being extended to the person whose election is contested, for which purpose the committee shall have power to adjourn from day to day, or to a day certain, as the nature of the case may require.

SEC. 28. No evidence shall be heard by said committee, unless it be evidence in support of the points made in the notice served on the person whose election is contested.

SEC. 29. No person shall contest any election, unless he shall have previously taken an oath, before some person du-

vernor, &c. to be printed.

Method of contesting election of governor and lieutenant governor.

Trial to be by joint committee of general assembly.

Powers of the committee.

Evidence admissible on trial.

Contester shall make

oath and be a ly authorized to administer oaths in this state, that he is a
voter. qualified voter of the state of Indiana, and that the charges
and specifications, or points on which he means to rely, as
set forth in the notice delivered to the person whose elec-
tion is about to be contested, are true as he verily believes;
which affidavit shall be delivered to the presiding officer
of the senate.

CHAPTER XXXIII.

An Act to provide for electing County and Township Officers.

[APPROVED, JANUARY 30, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That hereafter, when the office of clerk of the circuit court, recorder, or associate judge shall become vacant, by death, resignation, removal from office, refusal to qualify, or when the term of service of either of the aforesaid officers shall have expired, it shall be the duty of the governor, on being informed thereof, to issue a writ of election directed to the person acting as sheriff of the county where such vacancy shall have happened, commanding him to cause an election to be held in the several townships, for the purpose of filling the same, giving twenty days notice thereof in writing, to be put up at one of the most public places in each of said townships, or published in some newspaper printed in the county; which election shall be conducted in all respects as general election are; and the inspectors or one of the judges of each township, shall meet at the place of holding courts in the county, on the third day after the election, (provided it should not be on Sunday, and in such case on the succeeding Monday,) and compare the several election returns, in presence of the clerk of the circuit court; who shall make out a certificate under his hand and seal, of the person duly elected, which he shall seal up and transmit to the secretary of state, excepting however cases of contest, in which the certificate aforesaid shall not be transmitted, until such election shall be confirmed; and the person returned duly elected, shall be commissioned by the governor, and qualified into office according to the constitution and laws of this state.

SEC. 2. Should there be neither sheriff nor coroner in such county, it shall be the duty of the clerk of the circuit court, to give the notice required to be given by the sheriff aforesaid, and should there be no clerk in any such county,

Vacancy in the office of clerk, &c. how filled.

Writ of election to issue.

Notice.

Inspectors when & where to meet.

Certificate of election to be made out by clerk of circuit court.

When no sheriff, clerk to give notice.

or in his absence, it shall be the duty of the inspectors and judges aforesaid, conducting such election, to make out, seal up, and forward to the secretary of state, such certificate of election.

SEC. 3. That hereafter, when the term of service of any of the clerks of the circuit courts, recorder or associate judge, shall be about to expire, a poll shall be opened in each township in the county, on the first Monday in August next preceding the expiration of his or their term of service; the return of which, shall in all respects be governed by the law regulating general elections: *Provided*, That this act shall not be so construed, as to authorize any person who may be returned duly elected and commissioned as clerk of any of the circuit courts, recorder or associate judge, to enter on the duties of his office, until the constitutional term for which his predecessor may have been commissioned, shall have expired.

Term of service being about to expire, when election to be holden.

Proviso.

SEC. 4. The board doing county business in each and every county, shall lay off any number of townships in their respective counties, that the convenience of their citizens may require, describing the bounds thereof, which bounds shall be fairly recorded. The board doing county business in each county, shall, from time to time, make such alterations in the bounds of townships, as they may think proper.

Commissioners shall lay off townships.

SEC. 5. When the board doing county business shall divide any new county into townships, or make any new townships, they shall appoint an inspector of elections in each new township, and order an election in every such township, for such number of justices of the peace as they shall assign to each, not exceeding two to any one township; which election shall be governed in all respects as general elections are; and the persons having the highest number of votes (to the number to be elected in each township) shall be elected; and the returns of such election shall be made to the clerk of the circuit court of the proper county, the Wednesday following the election; a certified copy of which return shall be forwarded by the said clerk to the office of the secretary of state, within ten days after received, unless in cases of contested elections, certifying that such persons have been duly elected justices of the peace in such township and county; and the person so returned as elected, shall be commissioned by the governor, and qualified into office, in the same manner that associate judges are commissioned and qualified into office.

Appoint inspectors, and apportion the number of J.P.

Return of election thereof.

SEC. 6. When in the opinion of the board doing county business it shall be necessary, they may order two additional justices of the peace to be elected at each county seat, and one in any other incorporated town in said county, to

Additional justices may be elected.

reside therein; and in such cases, all the electors of the township wherein such election is held, shall be entitled to vote.

Change of
township not
to affect J. P.

SEC. 7. When any justice of the peace by the formation of any new township, shall be brought within the limits of the same, he shall be considered a justice of the peace for such new township, for and during the residue of the term for which he was elected; but whenever any justice of the peace shall remove out of the township wherein he was elected, his office shall be vacated, and his authority by virtue thereof shall cease. The board doing county business, or the clerk of the circuit court in recess, are hereby authorized to receive the resignation of justices of the peace; and in all cases of vacancies in the office of justices of the peace, by resignation, removal or otherwise, the county commissioners [board doing county business] on being informed thereof, shall cause such vacancies to be filled by election, as directed by this act.

Vacancies,
how filled.

Contests, how
decided.

SEC. 8. All contests of elections for county and township officers, shall be governed by the laws regulating general elections; except that the board doing county business of any county, when called together to receive testimony, in cases of contested elections, shall be judges to decide the contest of the election of any such county and township officers.

Contests in
new counties,
how tried.

SEC. 9. That in all contests of elections for county and township officers in new counties, at the first election therein, it shall be lawful for such contested election to be decided at the nearest county seat to the county where such contested election originated; and for that purpose the board doing county business, of the county where such contest is to be tried, is hereby constituted a competent tribunal to try and determine the same, in all respects, and subject to the like rules and regulations, as if the said contest had originated in their own county.

CHAPTER XXXIV.

An Act concerning Enclosures and Trespassing Animals.

[APPROVED, FEBRUARY 7, 1831.]

What shall be
a lawful
fence.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all fields kept for enclosures, shall be enclosed with a fence composed of sufficient posts and rails, posts and paling, or palisadoes or rails alone, laid up in the

manner which is commonly called a worm fence; which posts shall be deep set and strongly fastened in the earth, and all fences composed of posts and rails, posts and palings or palisadoes, shall be at least five feet in height; and all fences denominated worm fences, shall be at least five feet and a half in height, the uppermost rail in each panel thereof supported by strong stakes, strongly set and fastened in the earth, so as to compose what is commonly called staking and riding, otherwise the uppermost rail in each panel, shall be braced with two strong rails, poles or stakes, locking each angle or corner thereof; and in all the foregoing materials, the apertures between the rails, palings and [or] palisadoes within two feet of the surface of the earth, shall not be more than four inches, and from the distance of two feet from the surface, the apertures between such rails, palings or palisadoes, shall not be more than six inches; and that in all worm fences staked and ridden, the worm shall be at least four feet six inches; and if locked as aforesaid, the worm shall be at least five feet; and all fences of the height and strength herein required, shall be considered lawful against horses, asses, mules, hogs, sheep and neat cattle: *Provided*, That a fence of full height and strength, as required by this act, shall be a lawful fence against horses, mules, asses, and neat cattle, but unless otherwise constructed agreeably to the provisions of this act, shall not be a lawful fence as regards sheep, goats and hogs.

SEC. 2. For the better ascertaining and regulating partition fences, it is hereby directed that when any neighbours shall improve lands adjacent to each other, or where any person shall enclose any land adjoining another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence, (so far as enclosed on both sides) shall be equally borne and maintained by both parties; and the fence viewers of the proper township shall proceed at the request of any person or persons, who shall feel himself, herself or themselves aggrieved, to view all such fences, about which any differences may arise; and the aforesaid fence viewers in each township respectively, shall be the sole judges of the charge to be borne by each party, and of the sufficiency of all fences, whether partition or otherwise; and when they shall adjudge any fence to be insufficient, they shall give notice thereof, to the owners, proprietors or occupiers of the same, upon request of the other, and due notice being given by such viewers, if any person having such insufficient fence, shall refuse or neglect to make or repair such fence, or to pay the moiety of the charge of any fence before made, being the division or com-

Partition fences by whom to be made, and how maintained.

Duties of fence viewers.

Notice of insufficiency of fence.

Order to repair division fences, how

enforced by
justices.

mon fence, within twenty days after notice given, then upon proof thereof, before two justices of the peace of the proper county, it shall be lawful for such justices, to order the person aggrieved thereby, to make or repair such fence, who shall be reimbursed in his costs and charges, from the person so refusing or neglecting to make or repair such partition fence as aforesaid; or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, (as the case may be) and if the delinquent shall neglect or refuse to pay to the party injured, the moiety of the charge of any fence before made, or reimburse the costs and charges of making or repairing any such fence, under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof; the overplus, if any, to be returned to such delinquent; *Provided*, That nothing herein contained, shall be intended to prevent or debar any person or persons from enclosing his, her or their own grounds, in any manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or by dykes, hedges or ditches. All such walls and fences to be in height at least five feet from the ground, and all dykes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn or other quickset, so that such enclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *And provided also*, That such walls or fences of timber, other than those heretofore mentioned, and dykes, hedges and ditches, shall be subject to all the provisions, inspections and restrictions respectively, to which by this act any other enclosure or fence is made liable, according to the true intent and meaning hereof.

Expenses, &c.
to be levied
on delin-
quent's goods.
Provido, as to
other modes
of enclosing.

Provido.

Trespassing
animals may
be distrained.

SEC. 3. *Be it further enacted*, That if any domestic animal or animals, shall trespass by breaking into the lawful enclosure of any person or persons, such person or persons being injured by such trespassing animal or animals, the same may seize and distrain, and may retain until he, she or they, shall recover and receive the damages sustained by such trespass, together with the costs of advertising, and reasonable charges for keeping such animal or animals so distrained, in manner hereinafter directed.

Notice of dis-
tress, how gi-
ven.

SEC. 4. Every person making such distress, shall within twenty-four hours thereafter, give notice thereof to the owner or owners of such animal or animals, if such owner or owners can be conveniently found; if not, then the person distraining, shall within three days after the distress made as aforesaid, cause an advertisement describing the marks, brands, stature and colour of such animal or animals

and of the place where the same may be taken up, to be affixed in a conspicuous manner, at the most public place in the township where the distress was made, and if upon such notice or advertisement, the owner or owners shall appear, but neglect or refuse to make a tender of reasonable satisfaction to the party injured, for the damage sustained by such trespass, and for keeping such animal or animals, or if the said person making the distress, shall not accept the said satisfaction, either of the parties aforesaid may apply to any justice of the peace of the proper county, who shall on such application, issue his warrant directed to any two honest and respectable freeholders of the neighbourhood, commanding and enjoining them forthwith, to view the said trespass, and to value, appraise and ascertain the injury and damage sustained thereby, (having due regard to the lawfulness of the fence of the inclosure at the time of the trespass,) with the expenses and costs of keeping said animal or animals, and to make report on oath thereof to him, with all convenient speed; which said valuation and appraisement and return, they the said freeholders are enjoined to make accordingly; and if the said valuation and appraisement, shall not amount to more than the sum of money tendered to the party injured, as a recompense for the damage done as aforesaid, before the complaint made, then the said justice shall give judgment for the same only, in favour of the party refusing such tender, and reasonable costs and charges to the other party for the unjust vexation: but if the said valuation shall amount to more than the sum tendered, or if no such tender be made, then and in that case, the said justice shall award and give judgment for the valuation aforesaid, to the party injured, with reasonable costs and charges for keeping the animal or animals, and shall award execution upon every such judgment, with costs of suit accordingly.

Owner may tender damages and reclaim the animal.

Damages, how ascertained.

Judgment of J. P. on the assessment of damages.

SEC. 5. Whoever shall hurt, kill or damage any such animal or animals, by hunting and driving them from such enclosure, by neglecting to provide them with sufficient food and water after they have been distrained, or in any other manner intentionally, shall be liable for all damages so sustained, to the owner or owners of such animal or animals.

Liability for injury to animals.

SEC. 6. If no owner or owners appear and make out his, her or their claim to any such property so distrained, within two weeks after the same shall have been advertised as aforesaid, the person or persons making such distress, shall forthwith under the penalty of twelve dollars, cause the like advertisement to be published, three times in one or more newspapers published in the county where the distress was made, or if there be none in the county, then such adver-

When notice of distress shall be given in a newspaper.

Animal when
to be valued,
and how.

Value of dam-
age and ex-
pense of keep-
ing.

Distrainer li-
able for valua-
tion within 5
years.

Value of ani-
mal unde-
manded, &c.
how applied.

Penalty for
violating this
act.

Penalty, how
recovered.

Further pen-
alty.

tisement shall be conspicuously affixed to the court house door of the county; and the party distraining, shall make application at the expiration of two months after such publication, to a justice of the peace of the county, who is hereby authorized and required to issue his warrant, to two honest and respectable free holders of the proper township, and cause them upon their oaths or affirmations, to view, value, and appraise, the animal or animals so distrained, and to ascertain the damage done by the same, with reasonable charges for keeping such animal or animals, and to make return thereof to him as aforesaid; upon which valuation and return, the property of and in the animal or animals so valued, shall become, and is hereby vested in the person making such distress; but nevertheless the person so distraining and acquiring such property, shall be answerable and accountable to the owner or owners aforesaid, for the valuation money aforesaid, at any time afterwards, within the space of five years next after the publication of such advertisement as before mentioned in this act, having first deduct- ed therefrom the costs of such proceedings, advertisements and charges, for keeping said animal or animals, together with the damages ascertained by the before mentioned freeholders; but if the said owner or owners, shall not appear and demand the same within the time limited by this act, then the said person or persons, making such distress, upon demand made, shall pay over all such surplus money to the treasurer of the proper county, for the use of said county, under the penalty of double the sum retained in his, her or their hands, contrary to the provisions of this law.

SEC. 7. If any person or persons so distraining, shall neglect to give such notice as herein before directed, or shall neglect to set up and publish such advertisement as herein required, he, she or they shall lose all right to recover any sum or sums of money, for any such trespass, but shall deliver up the animal or animals so distrained, to the owner or owners thereof, without any reward or recompense whatever; and one half of all the fines imposed by virtue of this act, shall be to the use of the owner of such animal or animals, and the other half to the use of the proper county, to be recovered in a summary way, as debts not exceeding fifty dollars may by law be recovered.

SEC. 8. If any person or persons shall willingly and knowingly, keep and retain any horse, mare, gelding, mule, ass, head of neat cattle, sheep or hog, within his, her or their enclosure, for the space of twenty-four hours, without giving the notice required by this act, or shall neglect or refuse to comply with any other of the requisitions of this act, so far as it relates to trespassing animals, he, she or they shall for-

feit and pay for every such offence, the sum of twelve dollars, to be recovered and applied in manner aforesaid.

CHAPTER XXXV.

An Act regulating the taking up of Animals going astray, and Water Craft and other articles of value adrift.

[APPROVED, FEBRUARY 9, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That if any person or persons, shall take up any boat, flat, periogue, canoe, raft or other article of value adrift, he, she or they shall within five days cause the same to be advertised, in at least three of the most public places in the township, where such property is taken up, stating the time it was taken up, and giving a particular description of the property.

Taker up of water craft to advertise in 5 days.

SEC. 2. In case the owner of such property so taken up adrift, shall not appear, claim and prove the same, within ten days after notice given as aforesaid, it shall be the duty of the taker up, to report the same to some disinterested justice of the peace in the township, who shall issue his warrant to three disinterested householders in the neighborhood, (unless they can be otherwise procured) directing them or any two of them, to appraise such property and return their appraisement in writing to said justice, who shall cause them to make oath thereto, that their said appraisement was made without partiality, favour or affection, and that it also contains a true description of the property. All which shall be retained and filed by said justice, who shall also forthwith transmit a copy thereof to the clerk of the county, who shall enter the same on his book of estrays.

In ten days to have same appraised, and how.

SEC. 3. Any person who shall take up any head of neat cattle, any sheep, hog or goat, or any horse, mule or ass astray, shall proceed in the same manner as persons taking up water craft adrift are directed to proceed; and shall also, at the time of making the report aforesaid to said justice, deliver to said justice upon oath, a particular description of the marks, brands, colour, size and age of every such animal, and shall also make oath, that the marks or brands thereof, have not been altered by him or her, or by any other person to his or her knowledge, either before or since such taking up.

Proceedings to be had on taking up of neat cattle, &c.

SEC. 4. It shall be the duty of the taker up, at the time said appraisement is returned, to pay to the said justice the sum of fifty cents, one half of which said justice shall re-

Fees of justice, clerk and printer.

tain for his own services, and the other half he shall transmit to the said clerk at the same time that he forwards to him the said copy of the appraisement and description. But if from such appraisement, it shall appear that such property is worth ten dollars or more, it shall then be the duty of said taker up, to pay to said justice the sum of one dollar, to be by him divided and appropriated as aforesaid, and also shall pay him the further sum of one dollar, which sum together with [a copy of] said appraisement and description, said justice shall cause to be transmitted to the printer of the nearest newspaper, and to be published therein for three weeks successively.

To be advertised.

Clerks duty to set up a description & valuation at C. H. door.

SEC. 5. It shall be the duty of said clerk, to cause a succinct description of every such estray or other article adrift, so returned to him, together with the amount of the valuation thereof, to be publicly affixed at the court house door of his county, for the two successive terms of the circuit court thereafter.

Horses, mules, &c. to be taken to pound.

SEC. 6. It shall be the duty of the taker up of any estray horse, mule or ass, above the age of two years, to take the same to the pound of the proper county, if there be one provided by the board doing county business, and keep such horse, mule or ass in such pound, on the first days of every circuit court, for the several succeeding terms of said court during one year after the taking [up] of such estray or estrays; which shall be kept in such pound or stray-pen, from ten in the forenoon until three in the afternoon of each day of said courts.

Reward for taker up.

SEC. 7. As a reward, the taker up shall be entitled to demand and receive for every horse, mule or ass, one dollar; for every head of neat cattle, fifty cents; for every sheep, goat and hog, above six months old, ten cents; and in cases of property adrift, a reasonable sum, to be determined by some disinterested justice of the peace in the township. Such taker up shall also be entitled to demand and receive the fees paid by such taker up, and reasonable charges for keeping such estrays or property adrift, to be determined in manner aforesaid, before some disinterested justice of the peace of the proper township, who shall hear testimony for that purpose. But in case such taker up shall work or use such estray or property adrift, he, she or they, shall not receive any compensation for keeping such estray or property adrift.

When no reward shall be allowed.

How unclaimed horses, &c. shall be disposed of.

SEC. 8. If the owner or owners of any estray horse, mule or ass, whose appraised value exceeds five dollars, taken up under the provisions of this act, shall not appear within one year after the publication required, and prove his, her or their property, then and in that case, the taker up shall either pay the amount of the appraisement, after

deducting all reasonable expenses, to be ascertained and settled by a justice of the peace as aforesaid, into the county treasury, or produce the property on the first day of the circuit court next ensuing, and the same if produced, shall be sold by the sheriff to the highest bidder, between the hours of ten o'clock A. M. and four P. M. of said day, for county funds; and the amount of the sale, after allowing two per cent. thereon to the sheriff, and all lawful charges aforesaid, shall be paid into the county treasury, for the use of the owner or owners of such property, which shall be paid over to him, her or them, upon the order of the board doing county business, upon sufficient proof made to them of the ownership of such property. And if the owner of any estray neat cattle, hog or hogs, sheep or goats, taken up under the provisions of this act, whose appraised value exceeds five dollars, shall not appear and prove the same to be his property, within one year after such taking up, it shall be the duty of the taker up, within ten days after the expiration of such term, unless he elect to pay the amount of the appraisement into the county treasury, after deducting all reasonable charges and expenses for taking up and keeping such estray or estrays, to be ascertained as aforesaid, to go before some justice of the peace of the proper township, and inform him that the estray animal or animals remained unclaimed; and such justice shall thereupon direct some constable of his township, to advertise and sell such estray or estrays, giving ten days notice of such sale, and the constable shall return the proceeds of such sale to the justice making such order, and the justice of the peace, after paying and allowing the constable seventy-five cents for selling such estray or estrays, and the taker up his costs and charges, to be ascertained and liquidated before such justice of the peace, shall pay the residue into the county treasury, retaining fifty cents for his own services: and in all cases where the appraised value of any estray animal or animals does not exceed five dollars, the same shall be vested in the taker up after the expiration of one year from the advertising of such estray animal or animals; and it shall not be necessary to report the same to the clerk of the proper county.

SEC. 9. That if the owner or owners of any water craft adrift, taken up under the provisions of this act, the appraised value of which exceeds five dollars, shall not within sixty days after the publication required, prove his, her or their property, then and in that case, the taker up shall either pay the amount of the appraisement, after deducting all reasonable expenses, to be ascertained and settled as provided by this act, into the county treasury, or notify the sheriff of the proper county, who shall advertise the same for sale at its landing, giving five days notice; and the proceeds ap-

Sale of horses;
&c.

Avails of sale.

How un-
claimed cat-
tle, &c. shall
be disposed of.

Sale of cattle;
&c.

When cattle,
&c. shall vest
in taker up.

How un-
claimed water
craft shall be
disposed of.

Sale of water
craft.

When water
craft shall
vest in taker
up.

propriate, as is required in the case of stray animals, which shall be for the use of the owner or owners, upon sufficient proof made to the board doing county business, and paid upon their order. But if the appraised value of the property adrift, does not exceed five dollars, and it shall remain unclaimed sixty days after advertising the same, such property shall immediately thereafter vest in the taker up; and it shall not be necessary to report the same to the clerk of the proper county.

When report
need not be
made to clerk.

SEC. 10. Hereafter any property whatever that may be taken up under the provisions of this act, the appraised value of which shall not exceed one dollar and fifty cents, the justice of the peace before whom the same was taken up, shall not be required to make any report of the same to the clerk of the court of the county.

Owner claim-
ing, how to
proceed.

SEC. 11. In case the owner of any stray or property adrift, shall appear and claim the same of the taker up, before the same shall be vested in such taker up under the provisions of this act, it shall be the duty of such taker up, to go before the said justice to whom said appraisement was returned, if within the township, and if not, before some other disinterested justice therein, when requested by said owner or claimant, in order that said claimant shall have an opportunity to prove and regain his property. But if the taker up or his legal representatives, shall neglect or refuse to comply with his request, the claimants may apply to said justice, whose duty it shall be to issue his warrant, commanding the taker up, or his legal representative, to come before him and to bring along with him the stray or estrays claimed, if they be horses, mules or asses, and on the claimant's proving to the satisfaction of the justice, that said property so claimed doth belong to the claimant, he shall order the restoration of the same to the claimant, on his paying the necessary reward, fees and expenses, the amount thereof to be also determined by said justice, and also the costs of said proceedings; and if the said claimant shall refuse or neglect to pay the same, the said justice shall direct the sale of said property by some constable of his township, who after giving five days notice, shall sell the same to the highest bidder, and return the proceeds to said justice, retaining one dollar for his fees of sale, and said justice, after deducting the said reward, fees, expenses and costs, to be paid to the persons entitled thereto, shall pay the residue to the said claimant. And in case the property claimed shall be other than horses, mules or asses, it shall be the duty of the person in whose possession the same may be, to permit the claimant and his witnesses, on reasonable demand made, to examine the same.

Justice may
issue his war-
rant to taker
up, to have
claim proved.

Order of re-
stitution.

Owner refus-
ing to pay ex-
penses, pro-
perty be sold,
and how.

Taker up
shall permit
owner & his
witnesses to
inspect prop-
erty.

SEC. 12. That if the taker up of any property as afore-

said, or any person in whose possession the same may be, after the claim thereto shall have been adjudicated on as aforesaid and found for the claimant, shall neglect or refuse to deliver the same to be dealt with as aforesaid, the said justice shall issue an execution as in other cases, commanding the constable to take said property, if to be found, to be dealt with according to the judgment of said justice, and should it appear from the return of said constable or otherwise to the satisfaction of said justice, that said property cannot be found, he may, on motion of said claimant, render judgment against said taker up for the appraised value of said property and costs, (making the deductions aforesaid) or said claimant at his option may have his action of trover and conversion, or replevin for the same.

Remedy for claimant, if taker up refuse to give up the property.

Judgment by J. P. vs. taker up.

SEC. 13. When any estray or property adrift, taken up in pursuance of this act, the appraised value of which shall exceed five dollars, shall be restored to the owner, or shall die or be lost, it shall be the duty of such taker up, within one month afterwards, truly to certify in writing, signed by such taker up, to the clerk aforesaid, such restoration, with the name and place of residence of the person claiming the same; or such death or loss, together with the time and manner thereof.

Proceedings when estray is restored or lost.

SEC. 14. That no person shall be permitted or authorized, to take up any estray animal or animals, unless such person shall own land by deed or bond, or hold a lease of land for the term of three years or more; nor shall any person be authorized to take into custody any horse or stock, except at his or her place of residence, or to drive any horse or stock out of the woods, to their place of residence and take up the same, unless such horse or stock shall be found running at large in a wilderness country distant from any settlement, that might be lost to the owner if not taken up, or if the same may be likely to perish for want of food, or on account of the inclemency of the season. But such horse or stock shall not be removed out of the county where found, nor shall any person be authorized or permitted to take up any head of neat cattle, sheep, hog or goat between the first day of April and the first day of November in each year, unless the same be found within the enclosure of the taker up: *Provided always*, That when any animal or animals may be in the act of escaping from the owner or owners, or those entitled to the possession of the same, they may be taken up under the provisions of this act, at any time of the year, or at any place in the county, where they may be found.

Who may take up estrays.

Where to take up.

Cattle, &c; when not to be taken up.

Proviso.

SEC. 15. That the taker up of any estray or property going adrift is hereby prohibited, from removing the same out of the county where taken up, so as to prevent the

Estrays, &c; not to be removed from county, &c;

owner thereof from reclaiming the same, for more than the space of three days at any one time.

Several articles to be included in one advertisement &c.

SEC. 16. That when two or more estrays of the same species or several articles adrift, are taken up by the same person or persons, at the same time, they shall be included in one entry and one advertisement; and in such case the said clerk and justice, shall receive no greater amount for fees, than for one of such species.

Penalty for neglect or abuse.

SEC. 17. That any person or persons who may take up any animal going estray, or property adrift, under the provisions of this act, and shall be guilty of neglect or abuse of the same, so as to render the same of less value than it was when taken up, or shall sell or dispose of the same before the property thereof is vested in him, or shall neglect or refuse to comply with any of the provisions of this act, such person or persons shall on conviction thereof, upon presentment or indictment, in the county where such offence may be committed, be fined in any sum not exceeding double the value of such estray or estrays, water craft or other property adrift, and shall not be allowed any compensation for his, her or their trouble, and moreover shall be liable to be prosecuted in any court of competent jurisdiction, in an action on the case, by the owner of said estray or property adrift for the damages the same may have sustained thereby.

CHAPTER XXXVI.

An Act subjecting Real and Personal estate to Execution.

[APPROVED, FEBRUARY 4, 1831.]

Real and personal estate subject to execution.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the personal and real estate of every individual, company, body politic or corporate, including his, her or their goods, chattles, lands, tenements and hereditaments, be and the same are hereby made subject to execution, to be taken and sold according to the provisions of this act; except that necessary wearing apparel shall not be considered as any part of the estate of any defendant or defendants in execution.

Wearing apparel excepted.

Execution, how levied.

SEC. 2. That when hereafter, any writ of execution may issue against the goods, chattels, lands, tenements and hereditaments of any defendant or defendants, it shall be the duty of the sheriff or other officer, to levy such execution upon such part of the estate of such defendant or defendants, as he, she or they may direct; but if no such direction shall be given, the messuage, lands or tenements on which such defendant or defendants may be chiefly situated, shall not be levied upon, unless a sufficiency of other property to satisfy the execution or executions in the hands of

Defendant may direct on what part to levy.

the officer, cannot be found. And in all cases the real estate of execution defendants shall be exempt from levy and sale, until the personal estate of such defendants shall be first levied upon and sold, unless such defendants voluntarily authorize the sale upon execution, of their real estate. Personal estate to be first taken.

Provided, That nothing herein enacted, shall be so construed as to make it the duty of any sheriff or other officer, to levy upon and sell on execution, property selected for that purpose, by any execution defendant or defendants, if there exist any reasonable doubt whether such defendant or defendants is or are the bona fide owners of such property so selected. Proviso.

SEC. 3. That real and personal estate taken in execution, shall sell for the best price the same will bring at public action and out cry; except that the fee simple of real estate shall not be sold to satisfy any execution or executions, until the rents and profits for the term of seven years of such real estate, shall have first been offered for sale at public auction and out cry, and if such rents and profits will bring a sum sufficient to satisfy the execution or executions levied thereon; the sheriff or other officer selling the same, shall make to the purchaser thereof, a deed conveying to such purchaser, a term of seven years in and to such real estate, and moreover forthwith deliver to such purchaser immediate and actual possession thereof; and if such rents and profits will not sell for a sum sufficient to satisfy such execution or executions, then the fee simple, or other estate of the execution defendant or defendants shall be sold, and a deed conveying the same to the purchaser thereof, shall be executed by the officer selling the same. Property shall sell for the best price, &c.
Rents and profits of real estate for 7 years to be first exposed.
Seven years term, how conveyed.
Conveyance in fee-simple.

SEC. 4. That hereafter when any execution shall issue to any sheriff or other officer, against the goods and chattels, lands and tenements, of any execution defendant or defendants, if he, she or they have families, it shall be lawful for such defendant or defendants, to claim as exempt from execution, the following personal goods, to wit: one bible, one cow and calf, one bed and the necessary bedding therefor, household and kitchen furniture, not exceeding in value ten dollars, one chopping axe, one weeding hoe, one spinning wheel, and one reel, and the necessary provisions to supply the family two months; which said personal goods, so claimed by such execution defendant or defendants, such sheriff or other officer shall recognize as exempt from execution: *Provided*, The whole amount of property, hereby exempt from execution, shall in no case exceed fifty dollars in value. Property exempt from execution.
Proviso.

SEC. 5. That the body of each and every soldier of the revolutionary war, that now is, or may hereafter become a citizen of this state, shall be exempt from imprisonment for Revolutionary soldiers exempt from im-

prisonment
for debt.

debt, either on *mesne* or final process; any law, custom or usage to the contrary notwithstanding. All soldiers of the revolutionary war, who are regularly enrolled upon the pension list, shall be entitled to the provisions of this act, and shall be privileged from arrest, or entitled to be discharged from imprisonment from debt hereafter to be contracted, upon the production of evidence of such enrolment.

Notice of sale
of real estate,
how given.

SEC. 6. That any sheriff or other officer, levying an execution upon any real estate, shall previous to offering the same for sale, give at least twenty days notice of the time and place of such sale, by posting up written advertisements thereof, in three of the most public places in the township, in which such real estate may be situate, and also by advertising the same, for three weeks successively in the newspaper printed and published nearest such real estate, if any such newspaper be printed and published within the bailiwick of such officer. And previous to selling any personal estate on execution, the sheriff or other officer levying thereon, shall give at least ten days notice of the time and place of such sale, by posting up written advertisements thereof, in at least three of the most public places within the township in which such sale may be made.

Notice of sale
of personal es-
tate, how given.

Execution
unsatisfied to
be returned.

SEC. 7. That if the estate of any execution defendant or defendants, taken and sold on execution, by virtue of the provisions of this act, should fail to sell for a sum sufficient to satisfy the debt, damages and costs due and accruing upon such execution, the officer returning such execution, shall make return of his doings thereon accordingly, and another writ of execution may issue, to be credited by endorsement made by the clerk, execution plaintiff, or his agent or attorney, with the sum or sums previously paid or made on any previous execution, upon which writ of execution, the proper officer shall proceed to levy and sell in manner as herein before prescribed, making return of his doings thereon as in other cases.

Alias execu-
tion, and its
indorsement.

Second levy
and return.

*Venditioni ex-
ponas*, when to
issue.

SEC. 8. That whenever it shall so happen that property exposed to sale on execution, under the provisions of this act, cannot be sold for the want of buyers, the officer returning such execution, shall make his return thereon according to the fact, setting forth the property taken in execution, and that the same remains unsold for the want of buyers, and thereupon the writ or writs of *venditioni expnas* may issue, commanding the proper officer to advertise and sell the same according to the provisions of this act. And when any sheriff or other officer who may have sold any real estate under the provisions of this act, shall previous to making a deed therefor to the purchaser, go out of office by death, removal, resignation, or otherwise, it shall be the duty of the successor in office of such officer, to make the necessary

Successor of
sheriff shall
convey land
sold by prede-
cessor.

deeds to such purchaser, provided the purchase money has been duly paid.

SEC. 9. That if it shall appear upon the face of any writ of execution, or by endorsement thereon, made by the officer issuing the same, that any one or more of the persons against whom the same may be issued, is or are only security for any one or more of the persons against whom such execution may have been issued, the officer executing the same, shall first sell so much of the estate of the principal defendant or defendants, named in such execution, as he may be able to find, before he shall sell any of the estate of such security or securities, unless such officer may be otherwise directed by such security or securities.

Estate of a principal to be first sold.

SEC. 10. Whenever any person or persons, other than the execution defendant or defendants by himself, herself or themselves, his, her or their agent or attorney, shall file a claim in writing with the officer issuing such execution, setting forth that such person or persons, is or are the owner or owners of, and have just claim to any personal property levied upon by any officer by virtue of such execution, specifying the article or articles, item or items of property so alleged to be owned and claimed, accompanied by an affidavit that the said claim is just and true in substance and matter of fact to the best of his belief, which affidavit may be taken by and before the officer issuing such execution, or any person authorized to administer oaths, the officer having levied on such property as aforesaid, upon being notified of the filing of such claim and affidavit, shall summon three disinterested householders, to determine the question raised by such claim, and the trial of the right to such property shall be held before some justice of the peace of the proper township in which such property may be found, which justice shall attend upon the summons of the officer executing such execution, and shall preside at such trial, swearing the said householders summoned to try the right to the property aforesaid, and the witnesses introduced by the parties, and if any person or persons parties to such proceeding should consider himself, herself or themselves aggrieved by the determination of such trial, before such justice, it shall be the duty of such justice, upon the application of such person or persons, to certify to the circuit court, a true transcript of the proceedings had before him in the premises, under such limitations and restrictions as are prescribed in regard to other cases of appeals from judgments of justices of the peace, and furthermore to take from the person or persons retaining the possession of the property in controversy, a bond with sufficient security, conditioned for the delivery of the same to whomsoever it may be determined to belong, by the judgment of the circuit court, on said appeal; and if the

Claim of property seized, how made and tried.

Affidavit of claim.

Officer shall summon three triers.

Trial before J. P.

Appeal to C. court.

Damages on
affirmance.

Trial of claim
conclusive,
&c.

Proviso in fa-
vour of officer.

claimant should fail to establish his or her right to such property, on the trial of such appeal in the circuit court, it shall be the duty of such court trying the appeal, to assess in favour of such execution plaintiff, five per centum on the amount of such execution, if the amount of such execution shall be less than the value of the property claimed, or in case the sum due on such execution shall be more than the value of the property claimed, then five per centum on the value of the said property claimed, in case the court trying the case shall be of opinion that the appeal was taken for delay or vexation; and in all cases where a trial of the right of property has been had, the decision thereon shall be conclusive between the parties to such trial, so long as the same remains unreversed: *Provided*, That no officer shall be liable to any prosecution, for the taking any goods in execution, in the possession of the defendant or defendants unless notified or informed of the ownership therein, previous to his sale of such goods under execution.

SEC. 11. That clerks of the circuit courts, may upon request, issue executions directed to the proper officer of any county within this state, whose duty it shall be to obey and execute the same, and make due return thereof to the office from whence the same issued, according to the provisions of this act. And whenever an execution shall be issued in any county in this state, or from the supreme court, directed to the sheriff or coroner of any other county, it shall be lawful for such sheriff or coroner, having received such execution, and discharged all the duties therein required by law, to enclose such execution and forward the same by mail to the clerk of the court who issued such execution, and on proof being made by such sheriff or coroner, that such execution was mailed a reasonable or sufficient time to reach the office from whence it issued, within the time prescribed by law, such sheriff or coroner shall not be liable to any amercement or penalty for any failure of the safe arrival of such execution, any thing in this act to the contrary notwithstanding: *Provided*, That no sheriff or coroner, shall send by mail any money made on such execution unless he be especially instructed so to do by the execution plaintiff or his agent.

Delivery
bonds.

SEC. 12. That when any personal estate may be taken in execution, by virtue of the provisions of this act, the officer taking the same may release such property to the execution defendant or defendants, upon such defendant or defendants' executing a bond payable to the plaintiff or plaintiffs in execution, in a penalty of double the value of the property so released, conditioned for the delivery of such property, at a time and place named in such condition, to such officer, to be sold according to law; which bond shall be by such officer returned into the office from whence the execution by vic-

due of which such property may have been taken issued; and such bond shall be valid in law, and an action may be had thereon whenever the condition thereof may have been violated, and on recovery being had thereon, the amount due on such execution shall be assessed in favour of the plaintiff, provided the property so taken be of sufficient value to satisfy the same, and if not, then the value of the property so taken, together with ten per centum thereon. And on the judgment obtained on such bond there shall be no stay of execution and no delivery bond shall be taken by the officer executing the same, and execution issuing on such judgment, so obtained as aforesaid upon such bond, shall be made returnable in thirty days after the date thereof.

Suit on delivery bond.

Judgment.

Second delivery bond prohibited.

SEC. 13. That any person or persons against whom any judgment may be obtained, may have a stay of execution thereon of thirty days, if the sum for which such judgment may have been rendered shall not exceed six dollars, and a stay of execution of sixty days, if such sum exceed the sum of six dollars and does not exceed the sum of twelve dollars, and a stay of execution of ninety days, if such sum exceed twelve dollars and does not exceed twenty dollars, and a stay of execution of one hundred and twenty days, if such sum exceed twenty dollars and does not exceed forty dollars, and a stay of execution of one hundred and fifty days, if such sum exceed forty dollars and does not exceed one hundred dollars, and a stay of execution of one hundred and eighty days, if such sum exceed one hundred dollars; by procuring one or more sufficient securities to enter on the record of the court rendering such judgment, a recognizance acknowledging himself, herself or themselves bail for the payment of such judgment, together with the interest and costs accrued, accruing, and to accrue thereon, which recognizance may be entered in open court, or before the clerk of such court, and the same shall be considered as, and have the effect and force of a judgment confessed, in a court of record against the person or persons acknowledging the same, and their estates, and execution may issue thereon accordingly.

Stay of execution.

Security on stay of execution, how given.

Effect of recognizance of replevy.

SEC. 14. That when execution of any kind may issue upon any judgment, upon which no stay of execution may have been taken under the provisions of the thirteenth section of this act, the officer issuing the same shall endorse thereon that the same is repleviable, and also the date of the rendition of such judgment; and the person or persons against whom such execution may have been issued, may replevy the same for the length of time specified in the said thirteenth section of this act, from and after the date of the rendition of such judgment, as the same may be endorsed on such execution as aforesaid, by tendering to the officer

Indorsement on execution repleviable.

Replevy bond when taken by sheriff, &c.

Replevy bond
to be returned
to clerk's of-
fice.

Effect there-
of.

Judgments
not replevia-
ble.

Et. sa. when
to issue.

having such execution in his hands, a bond with one or more sufficient freehold securities, made payable to the execution plaintiff, in a penalty of at least double the amount demanded by such execution, and conditioned for the payment of the full amount demanded by such execution, together with the interest and costs accruing and to accrue thereon, at the expiration of the stay of execution to be fixed according to the provisions of this section, and the said thirteenth section of this act; which bond shall be returned by the officer returning the execution, as a part of his doings thereon, to the office of the clerk from whence such execution issued, which bond shall be by such clerk recorded, and such bond from the date of its execution shall be taken as, and have the force and effect of a judgment confessed in a court of record against the person or persons executing the same and against their estates, and execution may issue thereon accordingly.

SEC. 15. That on judgments obtained against any justice of the peace, clerk of the circuit court, sheriff, coroner, county treasurer, county agent, trustee of the county seminary fund, collector of the revenue, or attorney at law, or their securities, for monies by them collected or received, in trust for others, by virtue of their office, or against any individual or individuals, company or corporation, for money deposited with him or them, no stay or replevy of execution shall be allowed, and on executions issuing on such judgments, the court rendering the same shall order an endorsement to be made, that such execution is not repleviable, and such court shall also order that no stay of execution shall be allowed; and executions issuing upon such judgments shall be returnable in thirty days from the date thereof.

SEC. 16. That if any execution against the estate of a judgment defendant or defendants, be returned by the proper officer with his endorsement thereon, that no goods, chattels, lands or other estate of such defendant or defendants, can be found to satisfy such execution; or if the person having recovered any judgment, his agent or attorney, shall make and file, in the office of the clerk of the court, in which such judgment may have been rendered, an affidavit stating that he or she verily believes, that the person or persons, against whom such judgment may be outstanding, is or are about to leave the state, without leaving within the state a sufficient estate, subject to execution, to satisfy and pay such judgment, or that he or she verily believes that such judgment debtor or debtors does or will conceal his, her or their property, for the purpose of avoiding the payment of such judgment, a writ of *capias ad satisfaciendum* may issue in either case, on the

order of the judgment creditor or creditors, his or their agent or attorney, directed to the proper officer of any county in this state, as such judgment creditor or creditors, his or their agent or attorney may order.

SEC. 17. That whenever a writ of *capias ad satisfaciendum* shall issue, directed to the sheriff or coroner of any county, other than that in which the judgment upon which such writ may issue, may have been rendered, such sheriff shall not deliver the body or bodies of the person or persons thereby commanded to be taken, to the jail of the county from which such writ may issue; but such sheriff or coroner shall proceed to execute such writ, in all respects, as if the same had issued out of the office of the clerk of the circuit court of the county of which such sheriff or coroner is an officer, making return of his proceedings thereon, to the court out of which such writ may have emanated.

Ca. sa. issued to foreign county, how executed.

SEC. 18. That any person arrested by virtue of a writ of *capias ad satisfaciendum*, while in the hands of the officer making such arrest, or being actually imprisoned in jail on such arrest, may discharge himself or herself from custody by delivering to the officer making such arrest, a sufficiency of property, either real or personal, to discharge the debt or damages due on such writ, together with the interest and costs due thereon, or by delivering to such officer, all the property, both real and personal, of which he or she may be possessed, and solemnly swearing that he or she has no more or other property, either real or personal, subject to execution, and that he or she has no monies, rights, credits or effects, in his or her possession, or under his or her control, or in the possession or under the control of any other person or persons, for his or her use, and that he or she has neither directly nor indirectly disposed of, transferred or concealed any of his or her property, rights, credits, monies or effects, with intent to defraud his or her creditors, or by swearing in like manner, that he or she has no property subject to execution, either real or personal, and no rights, credits, monies or effects, in or under his or her possession or control, or in or under the possession or control of any other person or persons, for his or her use, and that he or she has not, either directly or indirectly, disposed of, transferred or concealed any of his or her property, rights, credits, monies or effects, with intent to defraud his or her creditors. And for the purpose of enabling any person arrested upon a *capias ad satisfaciendum*, to take either of the oaths above in this section prescribed, it shall be the duty of the officer making such arrest, upon the request of the person arrested, to take him or her before some judge of the circuit or supreme court, or justice of the peace for the county within which such arrest may have been made, and

Prisoner under a ca. sa. may be discharged by delivering sufficient property.

Or by taking insolvent oath.

Officer arresting, shall take prisoner before judicial officer to make oath.

- such judge or justice shall have full power to administer such oath, reducing the same to writing, and fully explaining the same to the person taking the same, and causing the same to be signed by the person swearing thereto, which oath, so taken and signed, shall be delivered to the officer making said arrest, who shall make the same a part of his return, appending it to the writ by virtue of which he may have made said arrest, and such return shall be available for such officer, in justifying the discharge of such arrested person from custody, if the same be true. And the execution plaintiff shall be entitled to written notice of the time and place at which, and of the officer before whom such oath will be taken, which notice shall be served upon such plaintiff or his agent or attorney, by the officer making said arrest or his deputy, if such plaintiff or his agent or attorney reside in the county within which said arrest shall have been made, and if neither the plaintiff or his agent or attorney reside in such county, the said officer making said arrest shall post up such notice in the clerk's office of such county; and at the time and place when and where such oath shall be administered, such execution plaintiff or his agent or attorney may attend and propound to said arrested person, such questions respecting his property, monies, rights, credits and effects, as may be considered relevant and proper by the judge or justice administering said oath; and such judge or justice shall reduce such questions and the answers thereto, to writing, and file the same in the office of the clerk of the circuit court of the county in which such examination may have been had. And persons arrested on writs of *capias ad satisfaciendum*, availing themselves of the provisions of this act, and bringing themselves strictly within the same, shall be thereupon discharged from arrest, and from further imprisonment or arrest, on account of the judgment on which such writs of *capias ad satisfaciendum* may have been issued.
- Sec. 19.** That if any person or persons being a prisoner or prisoners, charged in execution on a writ of *capias ad satisfaciendum*, shall die, such arrest and the consequent imprisonment shall not operate as a satisfaction of the judgment upon which such writ of *capias ad satisfaciendum* may have issued, and the party at whose suit such person or persons may have been so arrested or charged in execution, may sue out a writ of execution against the estate of such deceased person, or prosecute any other legal remedy, for the recovery of the amount of such judgment, in the same manner as if such writ of *capias ad satisfaciendum* had never been issued or executed.
- Sec. 20.** That in the exercise of the privilege allowed by the provisions of the second section of this act, to execu-
- Oath to be given to officer arresting.
- Oath shall justify officer.
- Notice of intention to take insolvent oath, to be given to plaintiff.
- Or be posted in clerk's office.
- Prisoner may be interrogated.
- Answers to be in writing.
- Discharge.
- Death of a prisoner, shall not be a satisfaction of the judgment.
- Remedy when prisoner dies in execution.
- Debtor shall not delay in

tion debtors, in selecting property to be taken and sold on execution, it shall be the duty of such execution debtors, to make such selection in good time to enable the sheriff or other officer, to advertise and sell property on such execution, before the return day of the execution then in the hands of such officer, and moreover to surrender on such execution, such portion of their estate as will be sufficient, in the opinion of such officer, to satisfy such execution, and on failure of such execution debtors to make such selection of property, in the manner and time aforesaid, such officer shall proceed to levy upon and sell, to satisfy such execution, such of the estate of such execution debtors as may be most readily found.

selecting property to be sold on execution.

SEC. 21. That in all cases of collectors and other debtors to the state of Indiana, the real and personal estate of the debtors, shall be bound from the test of the process by which such debtor is to be summoned or arrested to answer the demand of the state; and in all cases where the estate of the debtor is insufficient to pay his debts, the state shall have preference, and its demands shall be first settled and satisfied out of such estate.

State shall have preference of other creditors.

SEC. 22. That when any execution debtor may wish to discharge himself or herself from arrest or imprisonment, on a writ of *capias ad satisfaciendum*, by delivering property to the proper officer to satisfy the amount due on such writ, and shall so deliver such property to such officer, it shall be the duty of such officer to advertise and sell such property, on such writ of *capias ad satisfaciendum*, proceeding in all respects as if such property had been levied upon by virtue of an execution against the estate of such execution debtor, and such officer shall make return of his proceedings in the premises, according to the facts.

Property given up to satisfy *ca. sa.* how sold.

SEC. 23. That replevin bonds, and bonds for the delivery of property taken on execution, shall, when returned to the office of the clerk of the circuit court, be entered on the judgment docket of such clerk, and the date of such entry shall be noted; but the entering of security, by recognizance of record, for the payment of any judgment, and the replevying of an execution in the hands of an officer, and the giving of a bond for the delivery of property on execution, shall neither, nor all, operate as a satisfaction of the original judgment, upon which such proceedings shall or may be had, so as to extinguish the lien created by such original judgment, upon the estate of any judgment debtor.

Replevy bonds, &c. to be entered on judgment docket.

Replevy bonds, &c. shall not operate to satisfy the original judgment.

SEC. 24. That no real estate of any testator or intestate, shall be subject to execution, upon any judgment against the executor or administrator of such testator or intestate, unless the heirs of such intestate, the devisees of such testator, and the *terre tenants* of such real estate, be first made

Real estate of decedent not subject to execution unless heirs, devisees and *terre ten-*

ants are summoned.
 Proceedings on judgment vs. executor or administrator to have execution vs. real estate of deceased.

Notice to defendants.

Non-age of heirs not to suspend ex.

Mortgages, how foreclosed.

For foreclosure bill to be filed in circuit court.

parties to such judgment in the following manner, to wit: When any judgment shall be obtained against an executor or administrator, to be levied of the goods and chattels of the deceased, and execution issued thereon shall remain unsatisfied, in whole or part, for want of personal estate, and there is real estate in the state of Indiana, it shall be lawful for the plaintiff in such judgment, to file in the proper court, where such judgment is obtained, a petition against the executor or administrator and heirs and devisees, if any, of the deceased, setting forth the facts of the judgment, and the want of personal property, and that there is real estate in the state of Indiana, describing the same, and setting forth in what county or counties such real estate is situate and lies, and praying said court to award the proper writ or writs of execution against the same; and the clerk of such court shall, upon filing such petition, notify the persons against whom it is filed, of the pendency thereof, requiring them to appear on the first day of the next term of said court, and shew cause, if any they can, why the proper writ or writs of execution shall not be awarded; which said notice shall be given to residents by summons, served by the proper officer, and to non-residents, by publishing the same in the nearest newspaper, for four weeks successively. And if a summons shall be served on residents ten days before the sitting of the court, and be published as aforesaid, as to non-residents, the court shall at the first term, award the proper writ or writs of execution, directed to the proper officer of the proper county, unless good cause to the contrary be shewn; and the non-age of heirs or devisees, shall not in any case be good cause to suspend execution.

SEC. 25. That when default or defaults, shall be made or suffered, by any mortgager or mortgagers of lands, tenements or hereditaments, or by his, her or their heirs, devisees, executors, administrators or assigns, of, or in the payment of the mortgage money, or performance of the condition or conditions which they or any of them should have paid or performed, or ought to pay or perform, in such manner and form, and according to the tenor, purport and effect of the respective provisions, conditions or covenants comprised in the deeds of mortgage or defeasance, and at the days, times and places, in the same deeds respectively mentioned and contained, in any purchase; it shall and may be lawful to and for the mortgagee or mortgagees, and him, her or them who may hold the said deed of defeasance, and his, her or their heirs, executors, administrators or assigns, at any time after the expiration of the last day whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to file his, her or their bill, in the proper circuit court, according to the course of the common law, pray-

ing such court to foreclose the equity of redemption of the mortgager or mortgagers, to such mortgaged premises; and the said court, having jurisdiction thereof, shall make such equitable decree in the premises, between the parties, as may be right and just; and the said mortgaged premises, if ordered to be sold by said court, shall be sold as other lands are sold on execution, to the highest bidder, at public vendue; and the sheriff selling the same, shall make a proper deed of conveyance to the purchaser or purchasers thereof, as in cases of other lands, when sold on execution; and when such lands, tenements or hereditaments, shall be sold as aforesaid, the person or persons to whom the same may be sold, shall and may hold and enjoy the same, with their appurtenances; and such estate or estates, shall be discharged from all equity or benefit of redemption, and all other incumbrances made or suffered by the mortgager or mortgagers, his, her or their heirs or assigns; and such sales shall be available in law, and the respective vendees, mortgagees and creditors, their heirs and assigns, shall hold and enjoy the same, free and discharged as aforesaid: But before such sale be made, notice thereof shall be given in manner and form as is herein above prescribed, concerning the sale of lands upon execution.

Decree.

Mortgaged premises, how sold.

Conveyance.

Effect of foreclosure.

Notice of mortgage sale

SEC. 26. That whenever any goods, chattels, lands, tenements or hereditaments, shall be sold on execution, by virtue of any of the provisions of this act, and the same shall sell for more than will satisfy such execution, and the interest and costs accruing thereon, the sheriff or other officer making sale of such property, shall render the overplus to the execution debtor or debtors; and then, and not before, such officer shall be discharged thereof, upon the record of the same court to which he shall make return of his proceedings concerning such sales.

Overplus of sales to be paid to execution defendant.

SEC. 27. That no sale of property on execution, by virtue of the twenty-fifth section of this act, shall be construed to create any further term or estate in the vendees, mortgagees or creditors, to whom the same may be sold or delivered, than the estate so sold or delivered shall appear to have been mortgaged for, by the said respective mortgages or defeasible deeds.

What estate is conveyed by sale of mortgaged premises.

SEC. 28. That if any estate shall be sold upon execution, issued under and in accordance with the provisions of this act, upon any judgment or decree rendered by a court having jurisdiction of the matter of controversy, which may have resulted in such judgment, and such judgment or decree shall be afterwards reversed for error or errors, none of such estate so sold on execution, shall be restored in consequence of such reversal, nor shall the sale or delivery thereof be thereby avoided, but restitution shall in such case

Reversal of judgment shall not avoid sales bona fide.

be made of the money or price for which such estate may have been sold: *Provided however*, That the provisions of this section shall only extend to *bona fide*, innocent purchasers, who are not parties to the record.

Proceedings
vs. sheriffs, &c.
for failing to
return execu-
tions.

SEC. 29. That any sheriff or other officer, into whose hands any execution may come, for the collection of any debt, damages or costs, and who shall neglect or fail to return the same, on or before the proper return day thereof, or to pay over the money collected on such execution, shall be liable to pay the full amount of the debt, damages, interest and costs, required by such execution to be collected, together with full costs and ten per cent. damage upon the amount so as aforesaid required to be collected by such execution; all which may be recovered on motion, made before the court out of which such execution may have emanated, ten days previous notice having been given of such intended motion; and for all which, such court is required to render judgment against such officer, unless he shew cause, satisfactory to such court, why such judgment ought not to be rendered against him; and upon such judgment, execution may issue, returnable in thirty days from the date thereof; or suit for such failure may be maintained against such officer and his securities, on his official bond, and judgment be had thereon for the debt, damages and costs above mentioned.

Remedy by
motion.
Notice to offi-
cer.
Judgment.

Remedy by
suit on official
bond.

Return days
of executions.

SEC. 30. The first juridical day of the first term in the year of each circuit court, and the ninetieth day thereafter, or if the same should fall on Sunday, then the Monday next following; also the first juridical day, of the last term in the year, of such circuit court, and the ninetieth day thereafter, or if the same should happen on Sunday, then the Monday next following, shall be return days for all writs of execution, which may issue from such court.

CHAPTER XXXVII.

An Act regulating the Fees and Salaries of the several Officers and Persons therein named.

[APPROVED, FEBRUARY 7, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the officers and persons herein mentioned, shall be entitled to receive for their services, the fees hereby allowed, and no other.

Clerk's Fees in the Supreme Court.

Clerk of the supreme court	Every writ of error and seal	- - -	\$ 00 75
	Every summons thereon	- - -	" 50

Endorsing on writ of error that it is to operate as a supersedeas - - - - -	\$ 00 06
Endorsing same on summons - - - - -	" 06
A bond given by the plaintiff when not a freeholder and resident of the state - - -	" 37½
Filing writ and each paper in a cause - - -	" 06
Copy of a record or other paper, per sheet of 100 words - - - - -	" 12½
Discontinuance or retraxit - - - - -	" 12½
Copy of every rule when required - - -	" 12½
Bringing a particular record into court - - -	" 25
Entering satisfaction of record - - - - -	" 12½
Receiving and entering verdict - - - - -	" 12½
An execution - - - - -	" 50
Entering defendant's appearance - - - - -	" 06
Entering on docket - - - - -	" 12½
Entering judgment - - - - -	" 15
Subpoena, to include all the witnesses that may be called for at any one time - - - - -	" 50
Swearing each witness, constable or bailiff - - -	" 06
Making up and entering a complete record after judgment, per sheet of 100 words - - -	" 12½
Searching the record within one year, - - -	" 12½
Every year back - - - - -	" 06
On confession of error, judgment or default - - -	" 25
Continuing cause - - - - -	" 20
Every issue joined - - - - -	" 25
Issuing commissions to take depositions - - -	" 50
Entering any principal motion - - - - -	" 10
Every writ of supersedeas, or certiorari and seal - - - - -	" 75
Certificate and seal - - - - -	" 50
For a bond on a supersedeas - - - - -	" 75
Making out advertisement for non-resident defendant in error - - - - -	" 50
Issuing an attachment for contempt - - - - -	" 50
Every writ of elegit, venditioni exponas and other special writs not provided for - - -	" 50
Every hundred words contained in any bond, writ, obligation, or other writing, required by law to be done by him, and for which there is no specific allowance - - -	" 12½
For recording deeds or other writings when required, per 100 words - - - - -	" 12½

Clerk's Fees in the Circuit Court, in Civil Causes.

Every writ of capias and seal - - - - -	\$00 50	Clerks of the circuit court, in civil cases.
Entering action - - - - -	" 06	

A bond given by the plaintiff when not a freeholder and resident of the state	\$ 00 18 $\frac{1}{2}$
Filing declaration, or other pleadings	" 06 $\frac{1}{2}$
Copy of declaration or other pleadings when required, for each sheet of 100 words	" 12 $\frac{1}{2}$
Entering any motion and rule thereon	" 12 $\frac{1}{2}$
Discontinuance or retraxit	" 12 $\frac{1}{2}$
Copy of every rule when required	" 12 $\frac{1}{2}$
Bringing a particular record into court	" 12 $\frac{1}{2}$
Entering satisfaction of record	" 12 $\frac{1}{2}$
Receiving and entering verdict	" 12 $\frac{1}{2}$
Entering judgment	" 15
An execution	" 50
Transcript of record in error, on appeal, and returning it with the writ, per sheet of 100 words	" 12 $\frac{1}{2}$
Entering defendant's appearance,	" 06
Every writ of enquiry per sheet of 100 words	" 12 $\frac{1}{2}$
Entering on docket	" 12 $\frac{1}{2}$
Receiving and entering the traverse panel and swearing the jury	" 12 $\frac{1}{2}$
For entering fees on fee docket (except his own) per 100 words	" 12 $\frac{1}{2}$
A subpoena to include all the witnesses that may be called for at one time	" 50
All other writs not herein provided for	" 50
Swearing each witness, constable or bailiff	" 06
Filing each document not otherwise provided for	" 06
Making up and entering a complete record after judgment, per sheet of 100 words	" 12 $\frac{1}{2}$
Copy of a record when required, per sheet of 100 words	" 12 $\frac{1}{2}$
Searching the record within one year	" 12 $\frac{1}{2}$
Every year back	" 06
Entering report of referees, per sheet of 100 words	" 12 $\frac{1}{2}$
Entering rule of court and appointing referees	" 15
Continuing each cause	" 20
On surrendering the principal in court by sureties	" 15
Entering each principal motion	" 10
Every issue joined	" 25
On drawing special list of jury attending, striking and making copies of jury list for plaintiff or defendant	" 50
Making out advertisement for a non-resident defendant in chancery, or on libel for divorce	" 50
Issuing commission to take depositions	" 50

For a marriage license, and recording a certificate of marriage - - - -	\$ 1 00
Recording a certificate of an estray and advertising same on court house door - - -	" 50
Every writ of ad quod damnum - - -	1 00
Sealing weights and measures each - -	" 12½
Each writ of subpœna in chancery and writ of injunction - - - - -	" 50
Copy of writ of subpœna - - - - -	" 37½
Issuing an attachment for contempt under the seal of the court - - - - -	" 50
Every writ of eligit and other special writ not provided for - - - - -	" 50
For copy of a judgment to operate as a lien on real estate in another county - - -	" 50
For filing and recording such copy - - -	" 50
For every writ of venditioni exponas and scire facias - - - - -	" 50
And for every 100 words of the record transcribed in such writs - - - - -	" 12½
For recording certificate of marriage when no license has been granted - - - - -	" 50
Summons in lieu of capias - - - - -	" 50
Tavern license and bond - - - - -	1 00
License to retail spiritous liquors and bond -	1 00
For examining every account in court - -	" 10
Entering a writ of error, or certiorari from the supreme court - - - - -	" 12½
Every trial - - - - -	" 25
Certificate and seal - - - - -	" 50
Reading and entering each order - - -	" 10
Every bond, writ, obligation or other writing required by law, for which there is no specific allowance per every 100 words -	" 12½
<i>Provided, That where any nolle prosequi or discontinuance is entered by a prosecuting attorney, or by the plaintiff in any action, or where a nonsuit is suffered, it shall not be necessary to make a record of the same.</i>	

Proviso as to discontinuance, &c.

Clerk's Fees in Criminal Proceedings.

Taking a recognizance and drawing it up in form - - - - -	\$ 00 37½	Clerk's, in criminal cases.
Subpœna to include all the witnesses that may be called for at one time - - - - -	" 50	
A special venire or other writ (except a general venire) - - - - -	" 50	
Entering defendant's appearance - - - -	" 06	
An execution - - - - -	" 50	
Making up record per sheet of 100 words -	" 18½	

Copy of record when required per sheet of 100 words	\$ " 12½
Every order or rule of court	" 09
Filing record	" 12½
Entering the pannel and swearing the jury	" 25
Swearing each witness and constable	" 06
Reading order, summons or petition in court	" 06
Taking and entering the verdict	" 12½
Entering the defendant's confession	" 15
Copies of indictments and pleadings if required, per sheet of 100 words	" 12½
Discharging a recognizance	" 10

Probate Fees.

Clerk's fees in probate court.	For all copies per sheet of 100 words	\$ 00 12½
	For administering an oath	" 06
	For filing	" 06
	For a citation	" 50
	For letters of administration and recording and filing the same	1 50
	For taking and filing a renunciation and taking proof thereof	" 50
	For proving a will and endorsing a certificate thereon	" 50
	For qualifying administrator, taking bond, and writing certificate	1 00
	For filing caveat	" 12½
	For proving codicil, if proved separately, endorsing certificate, recording and filing same	1 00
	For recording and examining an inventory or account per sheet of 100 words	" 12½
	For granting administration with the will annexed	1 50
	For settlement of accounts of executor or administrator	" 50
	For every copy of said account not exceeding 100 items with the certificate and seal	" 75
	Reading and filing petition to sell land, and swearing the administrator to the truth of the statement made, and entering the necessary orders thereon, per 100 words	" 12½
	Giving notice by order of the court for sale of land, for every advertisement not exceeding three	" 25
	For entering up an order for the appraisers of decedent's estate	" 12½
	For recording will, per sheet of 100 words	" 12½

Sheriff's Fees.

Sheriff's fees.	For serving a writ and taking into custody	\$ 00 50
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For every mile in going to serve process	\$ 00 06
For taking bail	" 25
For taking a recognizance and drawing it up in form	" 37½
For returning every writ	" 10
For summoning a jury	" 75
For attending a review per day	1 00
For going to and returning from do.	1 00
For serving and returning a scire facias	" 37½
For serving a writ of possession with the aid of the posse comitatus	2 50
For serving such writ without the aid of the posse comitatus	1 25
For calling a jury in each cause	" 12½
For every person committed to the common jail,	" 37½
For calling every witness	" 06
For discharging every person out of the common jail	" 37½
For holding an inquisition, drawing up and returning the same	1 50
For serving a summons	" 37½
For attending a prisoner before a judge when surrendered by his bail, and receiving the prisoner into custody	" 50
For dieting a prisoner per day	" 31½
For selling property on an execution, a commission of five per centum on the first \$300, and two per centum on all sums above that amount; but when the money is paid without sale, one half of those commissions, only, shall be allowed.	
For taking a valuation of lands	" 75
For taking a replevy bond	" 75
For serving a ca. sa.	1 00
For levying on property and advertising the same, without sale	1 00
Mileage, as above, when no money is made, and no other fee or reward shall be allowed on executions, except for the expense of keeping property.	
For serving distress warrant	" 50
For making a deed on sales of real estate on execution	2 00
Serving a foreign or domestic attachment	" 50
Returning do.	" 25
For postage paid on letters received from, or directed to, the clerk of the supreme court enveloping process issued by said court, the	

amount thereof, to be returned as an item of charge.

In criminal cases not provided for, the like fees as for services in civil cases.

For collecting fee bill six per centum on the amount thereof.

To the sheriff for taking a prisoner to another county for trial or safe keeping, such fee as the board doing county business shall think reasonable and just, to be paid by the county to which such prisoner is taken.

For taking convict to state prison and all expenses incident to the same, per mile \$ 00 25

For each additional one taken at the same time per mile, to be paid out of the state treasury " 12½

For taking a prisoner to another county for safe keeping, or for trial on a change of venue granted by the legislature, such fee as the board doing county business in the county whence the prisoner was taken may in their discretion allow, out of the funds of said county.

Juror's Fees.

Juror's fees.	Every juror shall receive for his services in the circuit or probate courts, to be paid by the county, per day - - -	\$ 00 75
	In each cause tried by jury, the clerk shall tax, against the losing party, to be collected and paid into the county treasury by the sheriff	4 50
	Every juror attending trial before a justice	" 25
	Every grand juror sworn, for his services as such, to be paid by the county, per day -	" 75
	Every juror sworn in each action in the supreme court, to be taxed against the party failing in the suit - - -	" 37½

Witnesses' Fees in the Supreme and Circuit Courts.

Witnesses fees in supreme & circuit courts.	To every witness attending in his own county on trial, per day - - -	\$ 00 50
	To every witness attending from another county and going and returning, each day -	1 00
	To each witness, subpoenaed in the county, and detained from another county, each day -	1 00

Witnesses' Fees before a Justice.

Attending per day. - - -	\$ 00 25
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Prosecuting Attornies' Fees.

Prosecuting attornies.	For every conviction upon an indictment or presentment, on plea of not guilty - - -	\$ 5 00
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For every conviction upon an indictment or pre-sentment, on a plea of guilty - - - \$ 2 50

On each application for divorce where the same is not granted, to be paid by the applicant 3 00

Coroner's Fees.

Empannelling and swearing a jury and witnesses, and making and returning inquisition for the view of each body - - - Coroner's fees
\$ 5 00

The fees of an inquest to be certified by the coroner and paid out of the county treasury.

For all duties he shall perform when acting as sheriff, the same fees as are allowed to sheriffs in similar cases.

Recorder's Fees.

For recording a deed or mortgage - - - \$ 1 00 Recorder's fees.

Recording a bond - - - " 50

Recording a promissory note - - - " 25

Recording all other instruments, per sheet of 100 words - - - " 12½

Copies of all records and certifying the same per sheet of 100 words - - - " 12½

Recording town plats and additions thereto for every 100 lots and under - - - 2 00

Every lot over one hundred, each - - - " 01

For recording mortgage to superintendent of loan office - - - " 50

Fees of the Secretary of State.

For copies of records and papers per sheet of 100 words - - - \$ 00 12½ Secretary of state.

For every certificate and seal - - - " 50

Attornies' Fees in the Circuit Courts.

In all civil actions at law, where the title of land does not come in question, to be taxed with the costs, in favor of the party gaining the suit - - - Attornies in the C. court
2 50

In all civil actions where the title of land shall come in question, and in suits in chancery, to be taxed with the costs in favour of the party gaining the suit - - - 5 00

Attornies and Counsellors' Fees in the Supreme Court.

For every appearance to a cause on appeal or writ of error, to be taxed with the costs in favor of the party gaining the suit - - - Attornies in the S. court.
\$ 10 00

Surveyor's Fees,

When their services are ordered by a court of record or performed in cases where the law Surveyor's fees.

makes it necessary to employ a county surveyor.	
For going to and returning from a view per day, and for every thirty miles going to and returning from the same	\$ 1 25
For his actual service on the view per day	1 50
For going to, attending court and returning per day	1 25
For every survey by him plainly bounded, as the law directs, and for a plat of such survey, after the delivery of such plat, where the survey shall not exceed four hundred acres	3 00
For every hundred acres of land contained in one survey, above four hundred acres	" 25
For surveying a lot in town	1 00
For every additional lot surveyed at same time	" 25
For a survey began by him, which he is stopped or hindered from finishing, to be paid by the party requiring the survey	2 62
For running a dividing line one mile or under	1 25
And all division lines which may be run to divide any of the lands sold by the United States, shall be made agreeably to the laws of the United States directing the mode of surveying the public lands.	
For surveying an acre of land or less quantity for a mill or any other purpose	1 50
For every survey of land formerly patented, and which shall be required to be surveyed, and for a plat thereof delivered as aforesaid, the same fee as for land not before surveyed; and where a survey shall be made of any lands, which are to be added to other lands, in an inclusive patent, the surveyor shall not be paid a second fee, for the land first surveyed, but shall only receive what the survey of the additional land shall amount to. And where any surveys shall have been actually made of several parcels of lands adjoining, and several plats delivered, if the party shall desire one inclusive plat thereof, the surveyor shall make out such for	1 50
For running a dividing line between any counties or townships, to be paid by such counties or townships, in proportion to the number of taxable inhabitants \$1 00 per mile.	
For receiving a warrant of survey and giving	

a receipt therefor - - - -	\$ 00 18½
For a copy of a plat of land or a certificate of survey - - - -	" 25

Fees of Justices of the Peace.

For every investigation of a criminal information on oath - - - -	" 50	Justices of the peace.
Swearing each witness - - - -	" 06½	
For every warrant or other process in a criminal case - - - -	" 25	
For every bond or recognizance - - - -	" 25	
Every precept for forcible entry and detainer - - - -	" 25	
Every trial for forcible entry and detainer - - - -	2 50	
Writing and signing every attachment - - - -	" 25	
Taking an acknowledgment of a deed or a power of attorney - - - -	" 25	
Order for relieving a pauper - - - -	" 25	
Order for removing a pauper - - - -	" 50	
Issuing a scire facias - - - -	" 25	
Certifying description of a boat adrift, or estray - - - -	" 25	
Warrant and certificate of appraisement - - - -	" 25	
Taking and certifying depositions - - - -	" 25	
And for each hundred words therein contained more than 100 - - - -	" 12½	
For each process required by law in civil cases, and not herein enumerated - - - -	" 12½	
For every writing or record not herein provided for, every hundred words - - - -	" 12½	
Every trial and entry of judgment - - - -	" 25	
Entering judgment by default or confession - - - -	" 12½	
For certifying copies of all proceedings, for each 100 words - - - -	" 12½	
Entering each rule of reference or continuance - - - -	" 12½	
Every bond or recognizance of bail - - - -	" 25	
Every dedimus - - - -	" 25	
Every precept for summoning jury - - - -	" 12½	
Entering verdict of such jury - - - -	" 12½	
Each transfer of judgment - - - -	" 12½	
Issuing an execution - - - -	" 12½	
Subpœna for witnesses to include all that are called for at one time - - - -	" 25½	
For administering each oath required by law, and not herein enumerated - - - -	" 06½	
For attending the examination of insolvent debtor, each justice - - - -	" 25	
For issuing each writ to sheriff or jailer to bring insolvent person before him (each) - - - -	" 12½	
For making order for discharge (each) - - - -	" 12½	

For trial of right of property and judgment	\$ 00 25
For swearing jury	" 25

Constable's Fees in Civil Cases.

Constable's
fees in civil
cases.

For serving a summons or warrant on each person named therein	" 25
Travelling to serve process per mile	" 04
Where two or more are named in such process, mileage shall be allowed to the place of actual service, the most remote from the place where such process is returnable	
A copy of the process left at the defendant's residence	" 12½
Serving a subpoena, for each person therein named	" 12½
Returning each warrant, summons, & scire facias	" 05
Bail bond	" 25
Serving execution, and mileage as above	" 25
Commitment to prison	" 25
Sale of goods when the amount does not exceed six dollars	" 25
On all sums above six dollars 5 per centum.	
On all monies collected on execution without sale, half the above commissions.	
Returning execution	" 10
For summoning jury in any case	" 25
Attending jury trial before justice	" 12½

Constable's Fees in Criminal Cases.

Constable's
fees in criminal
cases.

For serving a capias on each person named therein	\$ 00 50
For serving a subpoena	" 20
Travelling to serve process, per mile	" 04
Attending an examination of a person charged with a crime	" 20
If more than one, an addition for each	" 05
Commitment of each person	" 25

Governor's
salary.

SEC. 2. The governor of the state of Indiana, shall be and is hereby allowed an annual salary of twelve hundred dollars, which shall be audited by the auditor of public accounts and paid out of the treasury quarterly, which shall be in full for all his services as governor, and in full for all house rents.

Members of
general assembly,
per diem allowance to.

SEC. 3. Each member of the general assembly, including the president of the senate and speaker of the house of representatives, for every day's attendance as such, shall be allowed two dollars, and eight cents per mile for every mile travelled on the most usual route, to and from the seat of government; which shall be certified by the president of

the senate and speaker of the house of representatives, severally, for the members of their respective houses, and be audited by the auditor of public accounts, and paid out of the treasury.

SEC. 4. The secretary, assistant and enrolling secretary of the senate, and the clerk, assistant and enrolling clerk of the house of representatives, shall each be allowed the sum of three dollars and fifty cents per day; which shall be certified by the president of the senate for the secretaries, and [by] the speaker of the house of representatives for the clerks, and be audited by the auditor of public accounts, and paid out of the treasury.

Secretaries & clerks of general assembly.

SEC. 5. The door-keeper of the senate and of the house of representatives, shall each be allowed the sum of two dollars and twenty-five cents per day, to be certified by the president of the senate and speaker of the house of representatives respectively, audited by the auditor of public accounts, and paid out of the treasury.

Door-keepers to general assembly.

SEC. 6. The clerks of the supreme and circuit courts, shall set up in some public place in their offices, and there constantly keep a fair table of their fees, on pain of forfeiting forty dollars for every court day the same shall be missing through their neglect; which penalty shall be to the use of the person who shall inform or sue for the same, and may be recovered in the circuit court, by action of debt or indictment.

List of clerk's fees to be kept up.

Penalty for omission.

SEC. 7. Any officer who shall claim, demand, or take any more or greater fees for any services by him done, within the purview of this act, than herein before allowed, shall forfeit and pay to the party injured, besides such fee or fees, treble the value of the sum extorted for every particular fee so unjustly charged, demanded or taken, to be recovered with costs in any court having cognizance thereof, by action of debt; provided the same be sued for within two years after the offence shall be committed.

Extortion.

SEC. 8. Recorders and county surveyors, may at any time after their fees shall become due make out their fee bills, stating each item particularly, which shall be signed by said recorder or surveyor; and all bills of fees in the supreme, circuit and probate courts shall be drawn up at full length in the same manner that fees are allowed in this law, particularly stating each item and to whom due, which shall be certified by said clerks, and sealed with the seal of the proper court in which the fees accrued—which shall have the force and effect of writs of fieri facias, for which fee bill and seal no fee shall be allowed—and the sheriff or coroner to whom such fee bill shall be directed and delivered, shall at the time he serves the same deliver a copy thereof if requested, to the person chargeable therewith, and pro-

Recorder and surveyor may issue fee bills.

Clerks of supreme, circuit and probate courts may issue fee bills.

How fee bill shall be served.

ceed to collect and return said fee bills, in the same manner that executions are collectable and returnable.

Fee bills, how taxed.

SEC. 9. No fee bill shall be issued for collection, until the same has been taxed or allowed by the court, or a judge or master in chancery of such court, or justice of the peace, as the case may be, approved, dated & signed by such taxing officer.

Justice's fee bill, how collected.

SEC. 10. When a cause shall be decided or be dismissed by the plaintiff, or when the stay allowed by law, on judgments before justices of the peace, shall have expired, it shall be lawful for such justice to issue his fee bill, and place the same in the hands of the constable of his county to be collected and paid over in the same manner as is provided for the collection of other fees; but no charge or demand shall be made by any officer, for making out a fee bill or copy thereof.

Witnesses fees when to be claimed.

SEC. 11. Witnesses shall claim their fees at each term as they attend and not afterwards—and the clerk shall take down said fees at the time they are claimed—and the sheriffs and coroners are hereby required to endorse upon all process served by them their fees at full length; and all clerks shall, in a book to be kept for that purpose, enter all fees as the services are rendered, and the clerk of the supreme or of any circuit or probate court, shall have the same power to issue fee bills from the book aforesaid and the papers on file in his office, for services rendered, by any person in said court before his official term of service, and in the same manner that any of his predecessors could have done had they continued in office.

Sheriff's and coroner's fees to be endorsed, &c.

Clerks to keep fee books.

Fee bill may be issued from fee book for predecessor,

Fees standing three years, how collected

SEC. 12. After three years from the termination of any suit in which services have been rendered, no fee bill shall issue for such services until the party claiming the same shall give five days notice in writing to the party charged, to appear before the court in which the fees accrued, or a judge thereof in vacation, or a master in chancery, or a justice of the peace as the case may be, and shew cause against the issuing thereof, and then if no sufficient cause to the contrary be shewn, the court, judge or master in chancery or justice of the peace, as the case may be, shall order the said fee bill to issue.

Suits on fee bills prohibited.

SEC. 13. No action shall be had or maintained on any fee bill due or owing to any of the persons aforesaid, so long as the party owing shall reside within the jurisdiction of the court issuing the same.

Surety for costs liable as principal.

SEC. 14. The same proceedings shall be had against the person or persons, who may by bond become security for costs for any other person or persons, as is herein provided against the principal.

Remedy vs. officer failing to collect or return fee bills.

SEC. 15. The said sheriff or coroner, and their securities, for a neglect of duty in collecting or returning said fee bills, shall be liable to the same penalties, and in the same man-

ner as for a neglect of duty in collecting or returning executions.

SEC. 16. The executors or administrators of such sheriff or coroner, shall be liable to a judgment, for fee bills received to be collected by their testator or intestate, and not accounted for, as far as assets may be found.

Liability of representative of deceased sheriff, as to fee bills.

SEC. 17. No officer shall issue a second fee bill containing charges for the same services, embraced in any fee bills previously issued, unless the one first issued, has been returned not satisfied, or proof filed, that such return would be true.

Second fee bill, when to issue.

SEC. 18. The clerk of the supreme court shall not hereafter make out or charge for a copy of a record, unless requested so to do by one or other of the parties.

Clerk of sup. court shall not copy a record unless requested, &c.

SEC. 19. If the sheriff or coroner shall be sued for any thing by him done in pursuance of this act, he may plead the general issue and give this act in evidence.

Sheriff, &c. sued may plead general issue.

SEC. 20. That each circuit court, or a judge thereof in vacation, or a master in chancery, or justice of the peace, as the case may be, if [a] question arise concerning any bill of costs, or the person charged therewith shall allege payment thereof, shall upon motion of any party interested therein, and reasonable notice thereof, determine, according to the rights of the parties thereto, and make order accordingly; and whenever there shall appear a claim for official services rendered by any officer of a court of justice, and there does not appear to be any fee fixed by law as a compensation therefor, the court on application, shall make order specifically fixing the allowance for such claim, having due regard to the comparative value of such service; and all such cases, the president of the several judicial circuits shall report to the next general assembly.

Items in cost bills, how contested.

When court may allow for official services.

SEC. 21. All fees to witnesses, and others, shall be considered due when the services are rendered, and fee bills may issue at any time after the fees are taxed.

Fees when to be due.

CHAPTER XXXVIII.

An Act to establish and regulate Ferries.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the several boards doing county business, shall be and are hereby empowered to establish public ferries across those rivers or creeks bounding or within their respective counties, whenever they shall deem it necessary, on due application to them made; but no such ferry shall

City boards shall establish ferries.

Ferries not to be nearer each other than one mile.

How established on water courses dividing counties.

Persons entitled, neglecting to apply, others may have ferries.

Notice of application.

Quantity of ground occupied.

Terms upon which owner of ground may afterwards claim ferry.

be established, unless the person making such application, be the proprietor of the land on that side of such river or creek, on which he wishes to have such ferry established; or where the owner or holder of any land where the public convenience may require that a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time: *Provided*, That no ferry shall be established within one mile immediately below or above a regularly established ferry, unless they shall deem it important for the public convenience, or where the situation of a town or village, the crossing of a public highway or the intervention of some creek or ravine should render it necessary.

SEC. 2. When any river or creek shall be the boundary line between two counties, and any person owning lands on either side of the said river or creek, shall wish to have a public ferry across the same, he or she shall apply to the board doing county business for the county in which his or her land lies, who are hereby authorized to establish such ferry from the land of such applicant to the opposite side. And when any person being the owner or holder of any land, lying on any river or creek within or bounding on this state, where any public road may cross the same, and where the public convenience may require that a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time, it shall be lawful for the board doing county business for the county in which it may be necessary to have such ferry established, upon proper application being made, and after having given three months public notice of their intention, by advertisement in some public newspaper in the county, or by written notices set up in three of the most public places in the county, to grant a license to some person to keep a ferry at such place, on such conditions as to them may appear reasonable and just, taking bond and security as hereinafter provided: And any person having obtained a license from the board as aforesaid, shall be and they are hereby authorized and empowered to keep such ferry so established, and also to occupy as much ground as may be necessary to discharge passengers, not exceeding one hundred rods on each side of the creek or river, as the ferryman may deem sufficient and necessary; but shall not be permitted to remove or disturb any boat lying at shore ten rods or more from the regular landing: *Provided*, That the owner of the land where such ferry may have been established, may demand and take possession of any such ferry, on his or her tendering to the holder of such ferry, the full value of all the boats and other craft which may have been necessarily employed for the transportation of passengers, with all other expenses that may have accrued in digging

the banks, or otherwise improving the ferry, and ten per centum thereon, giving also to the board doing county business a bond with security as hereinafter described; which bond shall be a complete release from the obligations contained in the bond previously given by the holder of such ferry.

SEC. 3. Where the land bordering on any creek or river, across which a public ferry is deemed necessary, shall be a public common for any town, the said board shall be authorized to establish ferries across such river or creek, on application of any person owning land next adjoining such public common, under the rules and restrictions that ferries are established to persons owning land bordering on such river or creek. *Provided*, That the foregoing provision shall not be so construed as in anywise to affect any town, or corporation, or the right of any person or persons, proprietor or proprietors of any town, their heirs or assigns, by giving the right of establishing a ferry or ferries to any person or persons who are not proprietors of the land on the margin of the river or creek, if the corporation of such town, or the proprietor or proprietors of such land, keep up a sufficient number of ferries across such river or creek.

How granted where land adjoining is a common.

Proviso in favour of towns and proprietors of towns.

SEC. 4. The board doing county business shall not establish any ferry, until the applicant shall prove satisfactorily, that written notices of his intended application, have been set up in three of the most public places in the township, at least thirty days.

Notice of application, how proved.

SEC. 5. The board doing county business for the county wherein a ferry is established, shall have authority to order and direct from time to time, what boat or boats, and the number of hands which shall be kept at each ferry respectively; and the owner of the land whereon such ferry is established, or the applicant to whom the ferry is granted, shall within three months from the establishment thereof, execute a bond payable to the state of Indiana, with one or more securities, to be approved by the board, in the penal sum of five hundred dollars, conditioned that he or she will keep such ferry, or cause the same to be kept according to law; and that he or she will give passage to all public messengers and expresses when required, without fee or reward whenever required; which bond shall be filed with the clerk of the county, to be proceeded on in the same manner as other public bonds, for any breach of the condition thereof; and if any person shall neglect or refuse to give such bond, he or she shall forfeit his or her right to said ferry.

C'ty boards shall order kind of boats and number of hands.

Bond of ferry keeper.

Bond to be filed and remedy thereon.

SEC. 6. All expresses sent on public service, by a commander-in-chief, colonel or major to the governor for the time being, or commanding officer of the militia, shall be

Expresses, &c. to pass free.

accounted public messengers and expresses, and shall pass all ferries free of charge within the condition of the bond aforesaid, if the despatch carried by such express be endorsed public service, and signed by the person sending the same. *Provided*, no ferryman shall be bound to give passage free, to any such express in time of peace.

Sufficient
boats and
hands to be
kept.

Hours of at-
tendance.

Banks to be
improved.

Ferry tax.

No tax.

Ferry keepers
exempt from
militia duty,
&c.

Penalty for
invading ferry
privileges.

SEC. 7. Each and every licensed ferry keeper, shall constantly keep a good and sufficient boat, or boats if more than one be necessary, with a sufficient number of able and skilful ferrymen, as may be directed and required by the board doing county business, and give due attendance to the said ferry or ferries, and to the transportation of all persons with his or her property, who shall apply for the same, from day-light in the morning until dark in the evening, so that no unnecessary delay may happen to persons having occasion to pass said ferry: and all licensed ferry keepers shall be obliged, at any hour of the night if required, except in cases of evident danger, to give passage to all expresses above recited, and to all other persons requiring the same, on their tendering and paying double the rate of ferriage allowed to be taken during the day time; and it shall be the duty of all ferry keepers within this state, to cause the banks of the river or creek to be dug sufficiently low, and kept in good passable order for the passage of man and horse and loaded wagons.

SEC. 8. Each and every licensed ferry keeper, shall annually pay for such privilege, not less than two and not above ten dollars, for the use of the county, to be assessed and collected pursuant to the provisions of the "act for assessing and collecting the revenue." *Provided, however*, That the boards doing county business, may in their discretion and under the restrictions herein before prescribed, establish and license ferries over streams that are otherwise impassable only for short periods in particular seasons, without any tax or fee, if the board shall be satisfied that the profits of such ferry will not justify the owner in paying a tax therefor: But every ferry so established, under the provisions of this section, shall be subject to all the rules, regulations and restrictions herein prescribed for regulating ferries, except so far as relates to the payment of a ferry tax.

SEC. 9. For the encouragement of ferry-keepers, and in consideration of setting over public messengers and expresses exempted from ferriage by this act, all men while necessarily employed in attending on licensed ferries in this state, shall be free from militia duty except in times of war or public danger; from working on roads and highways so far as personal service is required, and from serving on juries; and if any person or persons other than ferry keepers, licensed under the provisions of this act, shall for fee or re-

ward or any expectation or promise thereof, set any person over any river or creek whereon public ferries are established, or shall hire to any person or persons, a boat to be used in ferrying at any place within two miles of such public ferry, he, she or they so offending, shall forfeit the sum of three dollars for every such offence, to be recovered before any justice of the peace for the county wherein such offence was committed, in the same manner that other fines are recovered for the breach of the penal laws of this state, and likewise be subject to be taxed by the board doing county business, in the same manner as regularly licensed ferry keepers.

SEC. 10. The rates of ferriage shall be fixed by the board doing county business, at the time of licensing the ferry, and from time to time thereafter as they shall think proper. Rates of ferriage.

SEC. 11. If any ferry or ferries which now are or may hereafter be established, shall not be furnished with the necessary boat or boats, and ferrymen within six months after the establishment thereof, or if the proprietor shall at any time thereafter, wilfully neglect to attend to the same, it shall and may be lawful for the board doing county business for the county wherein such ferry or ferries may be situate, on complaint to them made, to cause the proprietor or proprietors of such ferry, to be summoned to shew cause at the next meeting of the said board, why such ferry or ferries should not be discontinued, and to decide according to the testimony adduced. For what causes, and how ferry may be discontinued.

SEC. 12. If any person shall think himself or herself aggrieved by the establishment or vacation of a public ferry, by the board doing county business under this act, he, she or they shall have the right of appeal to the circuit court of the proper county, upon his filing bond within thirty days payable to the treasurer of the county, with security to be approved by the clerk, and conditioned for the due prosecution of said appeal and the payment of all costs, if judgment be rendered against him, which bond with a certified copy of the proceedings of the said board, and all the original papers filed in the cause, shall be filed in the office of the clerk of the circuit court, and the cause docketed for the ensuing term, within twenty days thereafter; and further proceedings and judgment shall be rendered therein as in other cases of appeal. Appeal to circuit court.

SEC. 13. Any licensed ferry keeper who shall neglect or refuse to set over, at his ferry (during the hours of day light) any person or property without unnecessary delay, shall be fined by presentment or indictment in any sum, not exceeding one hundred dollars; and shall moreover be liable to the party injured in a civil action. Penalty on ferry keeper for neglect of duty.

SEC. 14. That hereafter when any person or persons, residing or staying in the states of Kentucky or Illinois, shall Penalty on non-resident

for invading
ferry privilege
on the Ohio
or Wabash.

ferry across the Ohio or Wabash rivers, from the Indiana shore, any where within one half mile of an established ferry, any person, beast, commodity or any thing whatever, for which the owner of such ferry might be entitled to ferriage had the owner of such ferry have ferried over the same, such person or persons so ferrying the same over as aforesaid, shall be liable to pay the owner of such ferry, the full amount of such ferriage, whether such person or persons received any pay therefor or not; and the owner of such ferry may recover the same by an action of assumpsit before any court having jurisdiction thereof: *Provided, however,* That the owner of such ferry shall not be entitled to recover the same, if his ferry at the time should not be in sufficient repair, and be sufficiently attended to, safely and in good time to ferry over such person, beast, commodity or thing so as aforesaid ferried over; nor shall this section be construed to extend to cases of sickness or distress, where the same may be necessary.

Proviso.

Non-resident
entitled to the
benefits of this
act.

SEC. 15. That nothing in this act shall be so construed as to prohibit any citizens of a sister state, owning lands in this state, from enjoying all the rights and privileges of ferrying, that a citizen of this state can by this law.

Penalty for
obstructing
ferry landings

SEC. 16. It shall not be lawful to obstruct by steam boats, keel boats, flat boats, or otherwise, the landings of ferries established under this act; but all such ferries shall be entitled to the exclusive use of the whole width of the routes leading thereto, for all appropriate purposes; and any person obstructing such landings shall be subject to the same penalties as are prescribed for the obstruction of public roads and highways.

CHAPTER XXXIX.

An Act authorizing the establishment of Fire Companies.

[APPROVED, JANUARY 5, 1821.]

Preamble.

Whereas it has been represented to this general assembly, that an act authorizing the establishment of fire companies, would greatly tend to prevent the destructive effects of fire, and promote an useful and organized co-operation for the suppression thereof: Therefore,

Be it enacted by the General Assembly of the state of Indiana, That from and after the publication of this act, it shall be lawful for any number of persons, resident within any town or corporation within this state, exceeding forty persons, to

form themselves into a company or companies, for the purpose of extinguishing fire; who on having their names and subscriptions recorded in the recorder's office of the proper county, are hereby authorized to make such rules and regulations as to a majority of said company or companies may seem proper and necessary for the procuring of engines, buckets, hooks and ladders, and all implements necessary for working said engines and exercising the companies raised; and all fines and forfeitures, for non-attendance or delinquency imposed by the regulations to be adopted by the companies provided for by this act, not exceeding twenty dollars, shall be recoverable by action of debt, before any justice of the peace of the proper county, by the said company in their corporate capacity, which said fines and forfeitures, shall be for the use of the company suing for the same.

Fire companies may be formed under certain restrictions. May form by laws, &c.

CHAPTER XL.

An Act against Forcible Entry and Detainer.

[APPROVED, JANUARY 21, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That two justices of the peace shall have authority to enquire by a jury, as is hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and with a strong hand detain the same, as against those who having lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such enquiry, that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained with force and strong hands, or that the same, after a lawful entry, are held unlawfully and with force and strong hands, then such justices shall cause the party complaining to have restitution thereof.

Trial for forcible entry & detainer by jury before two J. P.

SEC. 2. Where complaint shall be formally made in writing to any two justices of the peace, of any unlawful and forcibly entry into any lands or tenements and detainer as aforesaid, or of any unlawful and forcible detainer of the same, after a peaceable entry, they shall make out their warrant under their hands and seals, directed to the sheriff or coroner (as the case may be) of the same county, commanding him to cause to come before them, twelve good and lawful jurymen of the same county, and they shall be empannelled to enquire into the entry or forcible detainer

When a warrant shall be issued.

complained of; which shall be in the form following, to wit:

State of Indiana, *County, Sct.*
To the of county, GREETING:

Form thereof. Whereas complaint has been made to the undersigned, two justices of the peace for the county aforesaid, by E. F., of in the county aforesaid, that G. H., of yeoman, on the day of 18 at afore-said, with force and arms, and with strong hands, did unlawfully and forcibly enter into and upon a tract of land of him the said E. F. in aforesaid, containing acres, bounded as follows, to wit: (or into the messuage or tenement of him the said E. F. as the case may be,) and him the said E. F., with force and strong hands as aforesaid, did expel and unlawfully put out of the possession of the same; (or if it is a forcible detainer only, then the entry shall be described, and the detainer inserted as follows, to wit: And the said G. H. does unlawfully, unjustly, and with a strong hand, deforce and still keep out of the possession of the same:) You are therefore commanded in the name and by the authority of the state of Indiana, to cause to come before us, upon the day of 18 at the hour of and at in the county aforesaid, twelve good and lawful jurymen of your county, to be empannelled and sworn to inquire into the forcible entry and detainer (or for the detainer only, as the case may be) before described. Given under our hands and seals, the day of 18

A. B. }
C. D. } *Justices of the peace.*

SEC. 3. The said justices shall make out a summons to the party complained against, in the form following, to wit:

The state of Indiana,
To the of county, GREETING:

Form of summons to the defendant. You are hereby commanded to summon G. H., yeoman of to appear before the undersigned two justices of the peace, for the county of aforesaid, at the hour of on the day of at in the county aforesaid, then and there to answer to and defend against the complaint of E. F. to us exhibited; wherein he complains that (*here recite the complaint*), and make to us a return of this summons, with your proceedings therein, on or before the said day. Given under our hands and seals, the day of 18

A. B. }
C. D. } *Justices of the peace.*

Service thereof. Which summons shall be served upon the party complained against, or a copy thereof left at his usual place of

abode, seven days exclusively before the day appointed by the justices for the trial; and if after the service of such summons, the party does not appear to defend, the justices shall proceed to the enquiry in the same manner as if he were present; and when the jury shall appear, the justices shall lay before them the complaint exhibited, and shall administer the following oath to the foreman and to the other jurors:

Foreman's Oath.

You as foreman of this jury, do solemnly swear (or affirm) that you will well and truly try whether the complaint of E. F. against G. H. now laid before you, is true, according to the evidence: "So help you God."

Foreman's
oath.

The Jurors' Oath.

The same oath (or affirmation) that your foreman has taken on his part, you and each of you shall observe and keep on your respective parts: "So help you God."

Jurors' oath.

And if the jury find the complaint to be true, they shall return their verdict in the form following:

At an inquisition held before A. B. and C. D. Esquires, two justices of the peace for the county of _____, and state of Indiana, at _____ in the county aforesaid, on the _____ day of _____ 18____, the jury on their oaths, do find that the lands (or tenements) bounded as follows, (as in the complaint,) on the _____ day of _____ 18____, were in the lawful and rightful possession of the said E. F., and that said G. H. did on the same day unlawfully, with force and arms, and strong hands, enter forcibly upon the same: (or being lawfully upon the same, did unlawfully, with force and strong hands, expel and drive out the said E. F., and that he still continues wrongfully to detain the possession from him the said E. F.): Wherefore the jury, upon their oath (or affirmation) as aforesaid, find that the said E. F. ought to have restitution thereof without delay.

Form of ver-
dict.

SEC. 4. If by accident or challenge, there shall happen not to be a full jury, the sheriff shall fill the panel with bystanders as in other cases; and if the jury after a full hearing of the cause, shall find the complaint laid before them, supported by evidence, they shall all sign their verdict in the form aforesaid; otherwise the defendant shall be allowed his legal costs, and have his execution thereof.

Jury to sign
the verdict.

SEC. 5. If the jury shall return their verdict signed by the whole panel, that the verdict is supported by evidence, the justices shall enter up judgment for the complainant to have restitution of the premises, and shall award their writ of restitution accordingly; which writ of restitution shall be in the following form:

When J. P.
shall enter up
judgment, and
award a writ
of restitution:

The State of Indiana,
 Form of writ. To the of county, GREETING:

Whereas, at an inquisition of forcible entry and detainer, held before us the undersigned two justices of the peace, for the county of , in the said state of Indiana, at in the county aforesaid, on the day of 18 , the jurors empannelled and sworn according to law, returned their verdict in writing, signed by each of them, that E. F. was on the day of 18 , in the rightful possession of a certain messuage or tract of land, (as in the verdict returned,) and that &c: (as in the verdict:) Whereupon it was considered by us, justices as aforesaid, that E. F. should have restitution of the same. You are therefore commanded, that taking with you the force of the county, if necessary, you cause the said G. H. to be forthwith removed from the premises, and the said E. F. to have the peaceable restitution of the same; and also, that you levy of the goods, chattels, or lands of the said G. H., the sum of , being costs taxed against him on the trial aforesaid, together with more for this writ and your own fees; and for want of such goods, chattels or lands of the said G. H. by you found, you are commanded to take the body of the said G. H., and him commit to the common jail of the said county, there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he be delivered by due course of law; and make return of this writ with your proceedings. Witness our hands and seals at aforesaid, the day of , 18 .

A. B. }
 C. D. } *Justices of the peace.*

Appeal to circuit court.

SEC. 6. Every person or persons who shall be aggrieved by any proceedings which may be had under the provisions of this act, shall be entitled to an appeal to the circuit court of the same county, under the same restrictions and in the same manner that appeals are taken from the judgment of justices, under the statute respecting the trial of small causes; and the said circuit court shall hear and determine the same agreeably to the true intent and meaning of this statute, and carry the same into final execution; but such judgment shall be no bar to any after action brought by either party.

Three years possession, a bar to a writ of forcible entry & detainer.

SEC. 7. This law shall not extend to any person who has had the occupancy, or been in the quiet possession of any lands or tenements for the space of three whole years together, next before, and whose estate therein is not determined or ended.

SEC. 8. This act to be in force from and after its publication.

CHAPTER XLI.

An Act for the prevention of Frauds and perjuries.

[APPROVED, JANUARY 24, 1831]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all leases, estates, interest of freehold or terms of years, or any uncertain interest of freehold or term of years, or any uncertain interest, of, in or out of any messuages, lands, tenements or hereditaments, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.

Estates created by parol & without writing, estates at will only.

SEC. 2. Except nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two third parts, at least, of what the rent of the premises is really worth.

Leases not exceeding three years excepted.

SEC. 3. And moreover that no leases, estates or interests of freehold, or of term of years, or any uncertain interest, of, in, to or out of any messuages, lands, tenements or hereditaments, shall at any time be assigned or granted, unless it be by deed or note in writing, signed by the party so assigning or granting the same, or their agents thereunto lawfully authorized by writing, or by act or operation of law.

Assignment of leases, &c. to be in writing.

SEC. 4. No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate, or whereby to charge the defendant upon any special promise, to answer for the debt, default or miscarriage of another person, or to charge any person upon any agreement in consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement which is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some note or memorandum thereof, shall be in writing, and signed by the party to be charged thereby, or some person by him thereunto lawfully authorized.

Other contracts to be in writing.

SEC. 5. All declarations or creations of trust or confidence, of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party, who by law may be enabled to declare such trust or

Creation of trusts, to be in writing.

Trusts by implication or construction excepted.

confidence, or by his last will in writing, or else the same shall be utterly void and of none effect: *Provided always,* That when any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case, such trust or confidence shall be of the like force and effect, as the same would have been, if this act had never been passed, any thing herein contained to the contrary notwithstanding.

Assignment of trusts to be in writing.

SEC. 6. All grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting or assigning the same, or by last will or devise.

Mortgages of lands shall be proved and recorded within 90 days.

SEC. 7. Every deed or conveyance in the nature of a mortgage, which shall be made and executed in regard to any lands, tenements or hereditaments, situate in this state, shall be acknowledged or proved and recorded within ninety days after the execution thereof, and if not so acknowledged or proved and recorded, the same shall be adjudged

Or be adjudged fraudulent.

fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless such deed or conveyance, be recorded before the proving and recording of the deed under which such subsequent purchaser or mortgagee may claim. And all deeds and conveyances, which shall be made and executed within this state, of and concerning any lands, tenements or hereditaments therein, or whereby the same may in any way be affected in law or equity, shall be acknowledged by the grantors or bargainors, or proved by one or more of the subscribing witnesses thereto, before the recorder of the county in which such estate may be situate, or one of the judges of the supreme court of this state, or before one of the judges of the circuit court, or some justice of the peace of the county within which such estate may be situate, and shall be recorded in the office of the recorder of the county in which such estate may be situate, within twelve months after the execution of such deeds or conveyances; and every such deed or conveyance as shall at any time hereafter, be made and executed, and which shall not be acknowledged or proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless such deed or conveyance be recorded as aforesaid, before the acknowledging or proving and recording of the deed, conveyance or mortgage, under which such subsequent purchaser or mortgagee may claim.

Deeds of lands &c. to be proved & recorded within 12 months.

Or be adjudged fraudulent.

Exception.

Deeds, &c. how proved, when grantor and witnesses are dead.

SEC. 8. If the grantors and witnesses of and to any deed or conveyance, are deceased, or cannot be found, it shall be lawful for any judge of the supreme court, or any judge of the circuit court, or justice of the peace of the county in

which the lands granted, conveyed or mortgaged by such deed or conveyance lie, to take the examination of any witness or witnesses to prove the hand writing of any such deceased or absent witness or witnesses, or the hand writing of such deceased or absent grantor or grantors, if proof of the hand writing of the witnesses to such deed or conveyance cannot be had; which proof shall be certified by the judge or justice before whom the same shall be made, and such deed or conveyance, being so proved, shall be recorded as in other cases above directed.

SEC. 9. Whenever any husband and wife shall incline to dispose of and convey the estate of the wife, or her right of, in and to any lands, tenements or hereditaments whatsoever, it shall and may be lawful for such husband and wife, the wife not being less than twenty-one years of age, to make, seal, execute and deliver any grant, bargain and sale, lease, release, feoffment, deed, conveyance or assurance whatsoever, for the lands, tenements or hereditaments intended by them to be passed and conveyed, and after the execution thereof to appear before one of the judges of the supreme court, or before a judge of the circuit court, or justice of the peace for the county within which the estate conveyed or granted is situate, or before the recorder of such county, and acknowledge such deed or other instrument above enumerated, which acknowledgment such officers are respectively authorized to take, and in taking such acknowledgment, the officer taking the same shall examine the wife separate and apart from her husband, and shall read or otherwise make known to her, the full contents and purport of such deed or conveyance, and if upon such separate examination, she shall declare that she did voluntarily and of her own free will and accord, and as her act and deed, seal and deliver the said deed or conveyance, without any coercion or compulsion from her husband, every such deed is hereby declared to be good and valid in law, to all intents and purposes, as if the said wife had been sole and not covert at the time of such sealing and delivering; *Provided*, That the officer taking such acknowledgment, shall certify the same, under his hand and seal, by endorsement upon such deed or conveyance.

Husband and wife to join in conveying her int. rest in real estate.

Wife to be separately examined.

SEC. 10. It shall and may be lawful for any judge of the supreme or circuit courts, or any justice of the peace of any county in this state, to take the acknowledgement or proof of the execution of any deeds or conveyances, or release of dower of any lands or tenements, situate within any county in this state, which acknowledgments, proofs or release, so taken and made, being duly certified by the clerk of the circuit court of the county to which such officer may belong, and attested by the seal of such court, shall be valid

Acknowledgments of deeds &c. taken in other counties &c.

and effectual, and have the same force and effect as if the same were taken before an officer of the county in which the estate granted or conveyed by the deeds or conveyances so acknowledged or proved, may be situate.

Authentic-
ation of foreign
deeds.

SEC. 11. All deeds and conveyances made and executed by any person without this state, and brought hither to be recorded in the county in which the lands thereby granted or conveyed may be situate, the acknowledgment thereof having been made in the manner herein before directed, before any judge or justice of the peace of the proper county, in which such deeds or conveyances may have been made and executed, and certified under the seal of such county by the proper officer, shall be as valid and effectual in law, as if the same had been made and acknowledged as aforesaid, before a judge of the supreme court, or judge of the circuit court, or justice of the peace of the county within which the lands granted or conveyed by the deeds or conveyances so acknowledged, might be situate, any thing herein contained to the contrary notwithstanding: and it is hereby made the duty of each and every recorder of the several counties in this state, to receive and take the acknowledgment of deeds and other instruments of writing, offered for record.

Mortgage, sa-
tisfaction of,
how entered.

SEC. 12. Every mortgagee of any real or personal estate, having received full satisfaction and payment of the sum or sums actually due to him from the mortgager, shall at the request of such mortgager, enter satisfaction upon the margin or other place in the record of the mortgage, whereby such sums may be secured, which shall forever bar all actions brought or to be brought upon such mortgage, and shall operate as a complete discharge and release thereof.

Devises to be
in writing, at-
tested by two
witnesses.

SEC. 13. All devises and bequests of any lands or tenements, devisable by force of this act, or any other law of this state, shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor, by two or more competent witnesses, or else they shall be utterly void and of none effect.

Revocation to
be in writing,
&c.

SEC. 14. *And moreover*, no devise in writing, of lands, tenements or hereditaments, or any clause thereof, shall at any time be revocable, otherwise than by some other will or codicil in writing, declaring the same, or by burning, cancelling, tearing or obliterating the same, by the testator himself, or in his presence and by his direction and consent; but all devises and bequests of lands and tenements, shall remain and continue in force until the same be burnt, cancelled, torn or obliterated, by the testator or by his directions, in manner aforesaid, or unless the same be altered

by some other will or codicil in writing, or other writing of the devisor, signed in the presence of two or more competent witnesses declaring the same.

SEC. 15. That proof of such wills, testaments, codicils and revocations, shall be by the oath of one or more of such witnesses, if they be living and within the jurisdiction of this state, and if they be not alive, or without the jurisdiction aforesaid, then by proof of the hand writing of one or more of such witnesses, or of the hand writing of the testator; and wills, testaments, and codicils, devising lands in this state, executed abroad and proved according to the law of the country in which the same may have been executed, and duly certified under the seal of the court or officer taking such proof, and authenticated by the certificate of the presiding judge of such court, or the first judge of the county or district within which such proof may have been taken, that such authentication under the seal of the court or officer taking such proof as aforementioned, is in due form of law, shall be sufficiently proved, to admit the same of record, and shall be of like force and effect as if such proof were taken within this state.

Wills and codicils, how proved.

Wills executed out of the state, how certified.

Their force and effect.

SEC. 16. That proved wills, testaments and codicils devising real estate, or an interest therein, shall be admitted to record in like manner, as proved conveyances of real estate, and the records and copies of such records, shall be of like force and effect, as in cases of conveyances of real estate; but no lands, tenements or hereditaments shall pass by any will, testament or codicil, to any person or persons, devisees in such will, testament or codicil, who shall know of the existence thereof, and have the same in their power to control for the term of three years, unless within that time such person or persons shall cause the same to be duly proved according to the provisions of this act; but such neglect shall be deemed fraudulent and avoid such devise, and such lands, tenements and hereditaments, shall descend to the heirs of the testator; and all legacies and devisees, made by any last will, testament or codicil, to a subscribing witness thereto, shall be void, and the property so devised or bequeathed, shall go to the heirs or residuary legatee or devisee of such devisor.

Proved wills, &c. when recorded to operate as conveyances.

Wills to be void, unless recorded within three years.

Legacy to a subscribing witness, void.

SEC. 17. No nuncupative will, whereby the value of fifty dollars may be bequeathed, shall be valid, unless the same be proved by at least two competent witnesses, present at the making thereof, nor unless the testator request those or some of those present, to bear witness to such his last will, or to that effect; nor unless the same be made in the last sickness of the testator; nor unless within fifteen days after the making thereof, the substance thereof be committed to writing; but this provision shall not affect a testamentary disposi-

Nuncupative will, when valid.

Exception as to sailors, &c.

tion made by a person at sea, or in actual military service, of his moveables, wages and personal estate, at such time actually in his possession; and no nuncupative will shall be proved until the widow and next of kin of the alleged devisor, shall first have had reasonable notice of the time and place of proving the same.

Estates *per auter vie*, devisable as estates in fee simple, and assets in the hands of the heir or executor.

SEC. 18. That hereafter any estate, *per auter vie*, shall be devisable by will in writing, signed by the party devising the same, or by some other person in his name and in his presence, and by his express direction, attested and subscribed in the presence of the devisor, by two or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if the same shall come to him by reason of a special occupancy, as assets by descent, as in case of lands held in fee simple; and if there be no special occupant thereof, it shall be assets in the hands of the executors or administrators of the party, that may have had the estate thereof.

Alteration of devise of goods, to be in writing.

SEC. 19. No will in writing, concerning any goods or chattels, or personal estate, nor any clause, devise or bequest therein, shall be altered or changed by any words, or will by word of mouth only, except the same be in the life time of the testator committed to writing, and after the writing thereof read to the testator and allowed by him, and proved so to be done, by at least two witnesses.

Subsequent birth of a child shall revoke a will.

SEC. 20. If after the making of a last will and testament, a child be born to the testator, and no provision be made in the will for such a contingency, such birth shall operate as an entire revocation of such last will and testament.

Sale of goods void, unless by part payment or delivery, &c.

SEC. 21. No contract for the sale of any goods, wares or merchandize, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest, to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

Judgments in circuit & supreme courts, shall bind real estate from rendition.

SEC. 22. Judgments in the circuit and supreme courts of this state, shall have the operation of, and shall be liens upon the real estate of the person or persons against whom such judgments may be rendered, from the day of the rendition thereof, in the county within which such judgments may be rendered; and it shall be the duty of the clerks of such courts, when applied to by any person interested in any judgment rendered by any of the courts aforesaid, to make out and deliver to such applicant, an attested copy of the record of such judgment, authenticated by the seal of such court, which attested copy may be by such person filed

Transcripts of judgments may be sent to other counties to bind real estate.

In the office of any clerk of the circuit court within this state; and when so filed, the said clerk in whose office the same may be filed, shall record the same among the records of the court of which he is clerk, and enter the same on the judgment docket; and such attested copy when so filed, recorded, and entered as aforesaid, shall operate as a lien upon the estate of the person or persons against whom such judgment may have been rendered, situate in the county in which the same may have been so as aforesaid filed, recorded and entered, in the same manner and to the same legal extent that the same would have done, had such judgment been originally rendered in the circuit court of such county; which lien shall operate from the day of filing, recording and entering such copy as aforesaid. But no execution shall ever issue upon such attested copy, although the record thereof shall have the same force and effect in every other point of view, as any other record of such court might or could have.

Transcript to be filed and recorded.

Operation thereof.

SEC. 23. That no judgment rendered prior to the year eighteen hundred and twenty-six, shall continue to operate as a lien upon real estate, as against *bona fide* purchasers, as subsequent incumbrances, for a longer time than ten years after the first day of January in the year one thousand eight hundred and twenty six; and that all judgments rendered in the year one thousand eight hundred and twenty-six, and since that to be rendered, shall cease to operate as liens upon real estate, after the lapse of ten years from and after the date of the rendition thereof, unless the same be renewed and revived by scire facias against the judgment debtor, his heir or devisee and *terre tenant*; but any time of restraint upon the judgment creditor, by the order or decree of a court of justice, or by agreement between the plaintiff and defendant, entered of record, prohibiting execution to be done upon such judgment, shall not be computed as a part of the time aforesaid.

Limitation of lien of judgments prior to 1826.

Lien of judgments since 1826, limited.

Unless revived, or stayed by agreement.

SEC. 24. That for the benefit of purchasers and others, the clerk of any court of record shall keep a book in which during every term of such court, or within thirty days thereafter, he shall docket all judgments rendered at such term, for any sum of money, in alphabetical order, by the surname of the party against whom such judgment may have been rendered, and shall enter therein the parties to such judgment, both plaintiffs and defendants, the date of the rendition of such judgment, and the amount of debt, damages and costs thereby recovered; and such docketing shall be matter of record, and open to the inspection of all persons at reasonable times; and if such clerk shall neglect the duty aforesaid, the party injured shall have a right to recover of such clerk double damages, by action on the case

Clerks shall docket judgments in alphabetical order.

Penalty for neglect.

against such clerk, or of such clerk ~~and~~ his securities, by action on the official bond of such clerk.

Execution
may be levied
on trust estate

SEC. 25. It shall and may be lawful for every sheriff or other officer to whom any writ or precept may be directed, at the suit of any person or persons, of, for and upon any judgment, statute or recognizance hereafter to be rendered, made or had, to do, make and deliver execution unto the party in that behalf suing, of all such lands, tenements and hereditaments, as any other person or persons be in any manner or wise seized or possessed, or shall hereafter be seized or possessed, in trust for him against whom execution is so sued, like as such sheriff or other officer might or ought to have done, if the said party against whom such execution is or may hereafter be so sued, had been seized of such lands, tenements or hereditaments of such estate as they be seized of, in trust for him, at the time of such execution sued, which lands, tenements or hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seized or possessed, in trust for the person against whom such execution shall be

Trust estate
on death of
cestui que trust
shall be assets,
&c.

sued; and if any *cestui que trust* shall hereafter die, leaving in trust in fee simple, any estate to descend to his heir or heirs, such trust shall be deemed and taken, and is hereby declared to be assets by descent, and the heir or heirs shall be liable to and chargeable with the obligation of his ancestors, for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession, in like manner as the trust descended; any law, usage or custom to the contrary notwithstanding: *Provided always*, that no heir or heirs, who may become chargeable by reason of any estate or trust made assets in his hand by this law, shall by reason of any kind of plea or confession of the action, or by suffering judgment *nient dedire* or any other matter, be chargeable to pay the condemnation out of his own estate, but execution shall be sued and done, of the whole estate so made assets in his hands by descent, in whose hands soever it may come, after the writ, purchased in the same manner as it is to be by the common law, where the heir at law pleading a true plea judgment is thereupon prayed against him, any thing in the present act to the contrary notwithstanding.

Heir shall not
be chargeable
personally.

But execution
shall be done
of whole es-
tate, wherever
&c.

Fi. fa. shall
bind goods
from time of
delivery to
sheriff, &c.

SEC. 26. No writ of fieri facias, or other writ of execution, shall bind the property of the goods of the person against whom such execution is sued out, but from the time that such writ shall be delivered to the sheriff or other officer, for execution; and it shall be the duty of such sheriff or other officer, upon the receipt of such writ, without any fee for so doing, to endorse upon such writ the day of the month

Endorsement
of sheriff, &c.

and year on which he received the same: *Provided, however,* Proviso.

That the lien of such writ of fieri facias, or other writ of execution, shall be divested in favor of any other fieri facias, or other writ of execution, in the hands of any other officer, without regard to the time of delivery, if such other officer shall by virtue of such writ in his hands, make the first levy on such goods, and proceed with due diligence in perfecting execution of the same. First levy to have preference.

CHAPTER XLII.

An Act authorizing the arresting and securing Fugitives from Justice.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That if any person shall commit any crime in any of the United States or the territories thereof, and shall flee into this state, it shall be lawful for any judge of the supreme or circuit court, or justice of the peace within this state, on the oath or affirmation of any person charging such fugitive with a crime, to issue his warrant, and cause such fugitive to be arrested and brought before him; and after hearing the proofs and allegations for and against such fugitive, if in the opinion of such judge or justice, the proof is evident or presumption strong, as to the guilt of the person charged, it shall be the duty of the judge or justice, to commit such fugitive from justice to the common jail of the county where such arrest may be made, for any length of time not exceeding one month; or in case any sheriff, coroner or constable, shall have pursued such fugitive, it shall be the duty of such judge or justice, to give such sheriff, coroner or constable, a warrant to remove such fugitive; which shall be a sufficient authority to remove such fugitive from this state, to the state or territory from which he fled. Fugitive from justice fleeing into this state, how proceeded against. Warrant of removal.

SEC. 2. That when any warrant, capias or other process of a criminal nature shall issue from any judge, justice or other authority competent to issue the same, and shall be put into the hands of any constable or other person properly authorized to execute the same, against any person charged with the commission of any offence against the laws of this state, or when any person shall have escaped from legal custody, it shall and may be lawful for the officer holding such warrant, or from whose custody such person shall have escaped, to pursue such person to any county within this state, and arrest and secure him or her; and such officer shall have authority, by virtue of the powers herein given, to take the person thus arrested, to the county in which the offence was committed, or from which the escape was made: Fugitive fleeing from one county to another in this state, how arrested.

Oath being made in distant county, justice to endorse his name on the warrant.

When no sufficient prison, criminal to be sent to the jail of another county.

Provided however, That it shall be the duty of the said officer, previous to making any such arrest in any other than his own county, to go before some justice of the peace in the county, in which the fugitive is supposed to be, and make oath that the process was regularly issued in the county from which such fugitive fled, or in case of escape, that he is in pursuit of a person, naming him, who has escaped from legal custody; and when such oath shall be made, it shall be the duty of such justice when a warrant is produced, to endorse his name as such justice, on the back of the said warrant, or in case of escape and pursuit, issue a warrant directed to such officer, authorizing and commanding him to seize such fugitive, and retake him to the county from which he may have escaped; which endorsement or new warrant, shall give to such officer as full and ample authority in all respects, to make such arrest or recaption, as he would have in the county in which he was elected or appointed.

SEC. 3. That when there is no sufficient prison in any county, wherein any criminal offence shall have been committed, it shall be lawful for any judge of the circuit court of such county, upon application of the sheriff thereof, to order any person charged with a criminal offence, and committed or ordered to be committed to prison, to be sent to the jail of the county nearest, having a sufficient jail; and the sheriff of such county, shall on exhibit of such judge's order, receive and keep in custody, in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which such prisoner was sent; and the said sheriff shall upon the order of the circuit court, or a judge of said county, redeliver such prisoner when demanded.

CHAPTER XLIII.

An Act relative to Fugitives from Labour.

[APPROVED, JANUARY 22, 1824.]

How persons of another state, claiming service of one in this, shall proceed.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person or persons of any state or territory, having any claim to the service of any person or persons within this state, may in person or by attorney, go before the clerk of any circuit court within this state, and make affidavit, that he, she or they, or the persons for whom he or they are agents or attorneys, have or has a just claim to the service of such fugitive person or persons, agreeably to the laws of the state from which such fugitive or fugitives from labour, hath or have fled, as also the name or names of

the owner or owners; (when affidavit is made by attorney;) which affidavit shall be taken by such clerk and filed in his office; whereupon it shall be the duty of such clerk to issue his warrant, directed to the owner or owners of such fugitive from labour, or to his, her or their agent or attorney, commanding him or them forthwith to carry such fugitive before some justice of the peace or judge of the circuit court, or supreme court within this state; and it shall be the duty of the clerk to affix the county seal thereto, and the warrant so sealed as aforesaid, shall be sufficient authority for the person in whose possession the same may be, to authorize him to arrest such fugitive from labour, wherever he may be found in this state, and him to convey before some justice of the peace, judge of the circuit or supreme courts, that may reside in the county or district where such fugitive shall be found.

Duty of clerk
of C. court.

SEC. 2. It shall be the duty of such justice of the peace or judge, (as the case may be,) to cause such fugitive from labour to be taken into custody, and the same to commit or let to bail until the parties shall be ready for trial, which time shall not exceed sixty days, and shall be at the discretion of the justice or judge, upon the circumstances of the case made known by affidavit; and it shall be the duty of such justice of the peace or judge, as the case may be, to hear and determine the case in a summary way; and if such justice or judge shall be of opinion, that such fugitive did owe service according to the claim sworn to, he shall give such owner or agent a certificate of that fact, which shall be sufficient authority for such agent or owner, to remove such fugitive from the state: *Provided however*, That either party may appeal by paying the costs of such trial, and giving security for the costs that may accrue on such appeal; and in all cases where an appeal may be taken, it shall be the duty of the justice or judge to require of such fugitive from labour, to give security for his appearance, and abiding the event of such trial, and on failure thereof, to commit such fugitive to the jail of the county, there to be kept at the expense of the appellant until the time of such trial: *Provided also*, That no such appeal shall be granted to such fugitive from labour, until he or she shall make out and file affidavit, that he or she does not owe service.

Judge or justice may commit, or let to bail.

Determine in
a summary
way.

Give certificate.

Appeal may
be granted.

Fugitive may
be committed.

Proviso.

SEC. 3. In all cases where an appeal may be granted under the provisions of this act, it shall be the duty of the justice of the peace, or the judge, as the case may be, granting such appeal, to issue his warrant to the sheriff of the county, directing him forthwith to notify the associate judges thereof, or any circuit judge having jurisdiction in such county; whose duty it shall be, when so notified, to attend at the court house of the county, in which such arrest shall

Sheriff to notify associate judges, &c.

Shall summon
a jury.

have been made, on the day named in the warrant of the judge or justice as aforesaid, which day shall not be more than five days after the arrest; and it shall be the duty of such sheriff, to summon a good and lawful jury of the county, who shall attend at the time and place appointed for trial, and for failure so to do, shall be subject to like penalties as jurymen are in other cases.

Proceedings
of special
court, may be
certified to C.
court.

SEC. 4. That on the appearance of the parties before such special court, if either of the parties shall make it appear to the satisfaction of such court, that they cannot safely go into trial at that time, such court may continue such cause, until the ensuing term of the circuit court for said county, and shall send up a transcript of their proceedings to said court, together with the proceedings had before the judge or justice, before whom the first proceedings were had; on which the clerk of said circuit court shall docket such suit, where the same shall stand for trial, subject to the same rules of law and proceedings generally, as other civil actions are; any thing herein to the contrary notwithstanding.

CHAPTER XLIV.

ACT OF CONGRESS.

An Act respecting Fugitives from Justice, and persons escaping from the Service of their Masters.

[APPROVED, FEBRUARY 12, 1793.]

Fugitive from
justice, how
demanded by
executive of
state whence
he fled, &c.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and cause the fugitive to be delivered to such agent when he shall appear: But if no such agent shall appear

within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses, incurred in the apprehending, securing, and transmitting, such fugitive to the state or territory making such demand, shall be paid by such state or territory.

SEC. 2. *And be it further enacted,* That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Agent to transport him whence he fled.

Penalty for rescuing fugitive.

SEC. 3. *And be it further enacted,* That when a person held to labor in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the state or territory from which he or she fled.

Fugitives from labour, how reclaimed by master.

SEC. 4. *And be it further enacted,* That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them.

Penalty for obstructing arrest, rescuing or concealing fugitive from labour.

CHAPTER XLV.

An Act to prevent unlawful Gaming.

[APPROVED, JANUARY 2, 1824.]

Gaming contracts void. SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all promises, agreements, notes, bills, bonds, contracts, mortgages, or other securities whatsoever, made or entered into, after the taking effect of this act, when the whole or any part of the consideration of such promise, agreement, conveyance or security, shall be for money or other valuable thing whatsoever, won, laid or betted at cards, dice-tables, tennis-balls, or other game or games whatsoever, or at any horse-race, or cock-fighting, or any other sports or pastime, or on any wager whatever, or for the reimbursing or repaying, any money lent or advanced, at the time of such play, bet or wager, for the purpose of being betted or wagered, shall be utterly void and of no effect, to all intents and purposes whatsoever.

How, & when money won by gaming, may be recovered back. SEC. 2. If any person or persons at any time, by playing at any game or games, or betting on the hands or sides of such as do play at any game or games, shall lose to any one or more persons so playing or betting, any sum of money, or any valuable thing, and shall pay or deliver the same, or any part thereof; the person or persons, so losing and paying or delivering the same, shall be at liberty within six months next following, to sue for and recover the money or other valuable thing, so lost and paid or delivered, or any part thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any court, or before any justice of the peace, having jurisdiction thereof; in which action, it shall be sufficient for the plaintiff to allege, that the defendant is indebted to the plaintiff, or has received for the plaintiff's use, the money so lost and paid, or converted the goods won of the plaintiff, to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this act, without setting forth the special matter; and in case of the party so losing such money, or other thing aforesaid, shall not within the time aforesaid, bona fide, without covin or collusion, sue and with effect prosecute for the money or other thing, so lost and paid or delivered, it shall and may be lawful, to and for any other person or persons, by any such action or suit as aforesaid, to sue for and recover the same with costs of suit, against any such winner or winners, for the benefit of the family, or next of kin to the person or persons losing the same; and in case there shall be no such family or kindred, for the benefit of county seminaries.

Winner to answer on oath. SEC. 3. Every person by virtue of this act, who shall or may be liable to be sued for money or other things so won

as aforesaid, shall be compelled to answer upon oath, such bill or bills in chancery, preferred against him or them, for discovering the money or thing so won at play as aforesaid:

Provided however, upon discovery and repayment of the money or things, so to be discovered and repaid as aforesaid, the person or persons discovering and repaying the same with costs, shall be acquitted, indemnified and discharged from any further or other forfeiture, punishment or penalty, which he or they may have incurred, by playing for, or winning such money or other things so discovered and repaid.

On repayment, exempt from further penalties.

CHAPTER XLVI.

An Act directing the mode of suing out, and prosecuting writs of Habeas Corpus.

[APPROVED, JANUARY 12, 1828.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That hereafter upon petition, verified by affidavit, made to any judge of the supreme or circuit courts in this state, by or on behalf of any person supposed to be illegally imprisoned, or detained in custody, it shall be the duty of such judge, to endorse an order upon the said petition, directing the clerk of the circuit court of the proper county, to issue the writ of habeas corpus; and upon the filing of said petition and order in the office of the clerk, it shall be his duty to issue such writ, under the seal of the court, and make the same returnable *immediately*, before the judge making such order.

Mode of proceeding on suing out writs of habeas corpus.

SEC. 2. Upon the return of the writ before the judge ordering the same, together with the body of the petitioner, and the cause of his detention, it shall be his duty to examine the warrant of commitment, or other cause of detention, and if it shall manifestly appear, that the prisoner is illegally or unjustly detained, he shall order him forthwith to be discharged: *Provided however*, That if it shall appear to the judge, by affidavit or otherwise, or upon inspection of the warrant of commitment, or other cause of detention, that the prisoner is guilty of an offence, or ought not to be discharged, although the same may be defectively, informally, or unsubstantially set forth in the warrant of commitment, it shall be his duty to issue his warrant under his hand and seal, and to cause to come forthwith before him, the original complainant, or other necessary witnesses; and upon their examination he shall discharge, hold to bail, if the offence be bailable, remand or recommit the prisoner as to him shall seem just.

Rule of decision by the judge.

Further duty
of the judge.

SEC. 3. It shall be the duty of the judge to return said writ, together with an endorsement of his proceedings and final order thereon, to the office from whence it was issued: and in all cases where he shall be let to bail, it shall be his duty to take the necessary recognizance, and return the same to the office of the clerk of the proper county.

Penalty upon
judges and of-
ficers refusing
to act.

SEC. 4. If any judge shall, after a proper application is made, refuse to grant an order for a writ of habeas corpus, or if any officer, or other person to whom the same may be directed, shall refuse obedience to the mandate of said writ, he shall forfeit and pay to the person aggrieved a sum, not exceeding five hundred dollars, to be recovered by action of debt, in any court of record having cognizance thereof.

CHAPTER XLVII.

An Act to improve the Breed of Horses.

[APPROVED, DECEMBER 31, 1817.]

Horses run-
ning at large,
&c.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall and may be lawful for any person or persons to take up and geld, at the risk of the owner any stoned horse, of the age of eighteen months and upwards, that may be found running at large, out of the enclosed ground of the owner or keeper, and if the said horse should happen to die, he shall have no recourse against the person or persons who shall have so taken up and gelded the said horse; and the owner of the said horse shall moreover pay to the said person who has so taken up and gelded the said horse, or caused it to be done, the sum of one dollar, to be recovered before any justice of the peace of the county.

Mode of pro-
cedure on tak-
ing up a horse
of the height
of 14 1-2 hands
if known as a
covering
horse.

SEC. 2. It shall not be lawful for any person or persons to geld any horse above fourteen and one half hands high, that is known to be kept for covering mares, but if any owner or keeper of a covering horse shall wilfully and negligently suffer said horse to run at large out of the inclosed lands of the owner or keeper, any person may take up said horse and carry him to his owner or keeper, for which he shall receive two dollars, recoverable before any justice of the peace of the county; for a second offence double the sum, and for a third offence said horse may be taken and gelded, as is provided in the first section hereof.

CHAPTER XLVIII.

An Act providing for the support of Illegitimate Children.

[APPROVED, JANUARY 22, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That on complaint made to any justice of the peace in this state, by any unmarried woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which if born, also may be a bastard, accusing any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff or one of the constables of his county, commanding him forthwith to bring such accused person before such justice, to answer to such complaint; and on return of such warrant the justice in the presence of such accused person, (if such accused person can be taken by the proper officer, if not, then in his absence,) shall proceed to examine the complaint, on oath, respecting her cause of complaint, and such accused person shall be allowed to ask by himself or his counsel, such complainant under her oath or affirmation, (as the case may be,) any reasonable question necessary to his justification, and such answers and questions, with every other part of the examination shall be reduced to writing by the justice, and if on such examination, such accused person shall satisfactorily appear to be the father of the child so begotten, he shall pay or cause to be paid to the woman complaining, such sum or sums of money or other property as she may agree to receive in full satisfaction; and shall further enter into bond with the overseers of the poor of the township in which such woman shall reside, and their successors in office, conditioned to save such county free from all charges toward the maintenance of said child; and in case such person shall so comply with the requisitions of this act, then the justice shall discharge such person, on his paying the costs of prosecution.

J. P. to issue warrant on complaint.

J. P. and the accused may interrogate the complainant.

Examination to be in writing.

Indemnifying bond to the overseers of the poor.

SEC. 2. When any woman has a bastard, and neglects to bring suit for the maintenance of such child, or commences a suit and fails to prosecute to final judgment, the overseers of the poor in any township, interested in the support of any such bastard child, when sufficient security is not offered to save the county from expense, shall bring forward a suit in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child.

Overseers of the poor may prosecute the reputed father

SEC. 3. In case such accused person do not comply with the provisions of the first section contained in this act, the justice to whom such complaint was made, shall bind such person in a recognizance to the next circuit court, with suf-

When the accused shall be recognized or committed to jail.

ficient security, in a sum not less than one hundred dollars, nor more than five hundred dollars, to answer such accusation, and to abide the order of said court thereon; and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer to such complaint.

If the complainant be unable to attend the circuit court, a continuance may be had.

SEC. 4. If it shall happen at the time of holding such court, that the woman be unable to attend, the court shall order the renewal of the bonds of recognizance, that the accused person shall be forthcoming at the next court, at which the mother of said child shall be able to attend; and the continuance of said bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

Plea of not guilty, to be tried by a jury.

SEC. 5. Whenever such accused person shall plead not guilty to such charge, before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue, the examination before such justice shall be given in evidence; and the mother of such bastard shall be admitted as a competent witness, and her credibility left with the jury: *Provided always*, That no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would disqualify her from being a witness in any other case. On the trial of the issue, the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also, any variation in her testimony before the justice, and that before the jury, and also any other confession of her at any time, which does not agree with her testimony, or any other plea or proofs made on behalf of such accused person.

On a verdict of guilty, the accused to give security, &c.

SEC. 6. In case the jury find the defendant guilty, or such accused person before the trial shall confess in court that the accusation is true, he shall be judged the reputed father of such child, and shall stand charged with the maintenance thereof, in such sum or sums as the court shall order and direct, with payment of costs of prosecution; and moreover be liable to the suit of the complainant for damages; and the court shall require the reputed father to give security to perform the aforesaid order, and in case the reputed father shall refuse or neglect to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the proper county, there to remain until he shall comply with the order of the court, or until such court shall, on sufficient cause shewn, direct him to be discharged.

This act shall commence and be in force from and after the publication hereof.

CHAPTER XLIX.

An Act concerning Insane Persons.

[APPROVED, JANUARY 22, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any bargain, sale, conveyance or act of any person or persons, in a state of insanity, shall be void and of no effect in law. Acts of insane persons void.

SEC. 2. When any circuit court in this state, shall receive satisfactory information that any person in their respective counties, having property, and is or have become insane, it shall be the duty of the said court, to direct the sheriff of the county to summon twelve intelligent, disinterested men of the county, impartially to enquire into the fact, and to appoint the time and place where such jury shall meet and inspect such insane person, and also to cause to come before them, such persons as they may think proper, to give testimony as to the insanity of such person, and if the jury so summoned and sworn, shall decide from such inspection and testimony, that such person is insane, and not able to take care of his or her property, the court shall proceed to appoint three suitable persons as guardians of the person and estate of such insane person; whose duty it shall be to take such care of the person and property of such insane person, as may be necessary for the safety and preservation of the same. Circuit court to appoint guardians after a verdict of insanity.

SEC. 3. Whenever it may be thought necessary, the circuit court of the county wherein such inquest of insanity was held, upon proper representation, may direct and order the sale of the real and personal estate of such insane person, for the support of such insane person, his or her family, the payment of his or her debts, or for the improvement thereof; and generally to act and do what to them shall seem proper, for the benefit of the person or property of such insane person, consistent with law. Circuit court may order a sale of property.

SEC. 4. As soon as it is determined by inquest as mentioned by the second section of this act, that such person is insane, it is hereby declared that all judgments, executions and suits pending against such insane person, shall be suspended until the appointment of a guardian or guardians; and then the same proceedings may be had against such guardian or guardians, whose appointment shall continue during the insanity of such insane person, to be recovered by the court for the recovery of the debts of such insane person, under the same rules, restrictions and regulations as are prescribed by the existing laws of this state against administrators and executors. Judgments, executions, &c. after verdict of insanity, suspended.

SEC. 5. All persons insane, who have no property for their support, shall be entitled to all the benefits of the laws When insane persons shall

be considered
paupers.

of this state, for the relief of paupers; and the overseers of the poor, and all other persons concerned, are directed to govern themselves according to the provisions of an act for the relief of the poor.

SEC. 6. All acts and parts of acts concerning insane persons, heretofore in force in this state, are hereby repealed.

This act to take effect and be in force from and after its publication.

CHAPTER L.

An Act to provide for the Inspection of Salt, Beef and Flour.

[APPROVED, JANUARY 24, 1829.]

Inspectors of
salt.

Their duty.

Compensa-
tion.

Sale without
inspection
prohibited.

Penalty.

Inspector of
flour, beef and
pork.

Oath of.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall be lawful for the board doing county business in any county in this state, when they think proper to do so, to appoint an inspector, who shall hold his office during the pleasure of said board, whose duty it shall be to inspect all salt in barrels that may be offered for sale in such county, and shall brand the same on one end of the barrel, first, second or third rate, agreeably to the quality such barrel may contain; for which inspection the owner or owners of such salt, shall pay to the inspector five cents for each barrel by him so inspected.

SEC. 2. *Be it further enacted*, That if any person or persons, in any county where such inspector may have been appointed, shall offer for sale and vend any salt by the barrel, without being inspected and branded as is provided by the first section of this act, he, she, or they, so offending, shall for every such offence, be fined in any sum not less than three, nor more than twenty dollars, before any court having competent jurisdiction, by presentment or indictment, for the use of the county seminary.

SEC. 3. It shall further be lawful for the board doing county business in any county in this state, when they may think proper to do so, to appoint some suitable person, as inspector of flour, beef, or pork in barrels, who shall hold his office for three years, and until a successor be appointed and qualified; and such inspector, before he enters upon the duties of his office, shall take the following oath or affirmation before some justice of the peace, a certificate of which shall be endorsed on the certificate of his appointment—"I A. B. do swear, (or affirm as the case may be) that I will faithfully and impartially, according to the best of my skill and judgment, perform the duty of inspector of flour, beef, and pork, according to the laws in force relative thereto."

SEC. 4. That each inspector of any county in this state, shall on the application of such owner, owners or agents of flour, beef, or pork, intended for exportation in such county, and who may wish to have the same inspected, attend and inspect the same, and for every such inspection, he shall be entitled to receive three cents for every barrel of flour, and ten cents for each barrel of beef or pork; and the said inspector shall not be entitled to receive any more than the rates aforesaid, under the penalty of fifty dollars for every such offence, to be recovered in any court having cognizance thereof, one half to the use of the person prosecuting for the same, and the other half for the use of the proper county seminary.

Duty.

Compensation.

Extortion.

SEC. 5. That each barrel of flour so inspected, shall contain one hundred and ninety-six pounds of flour avoirdupois; and if intended for the first quality, shall be branded by the inspector "superfine;" and each barrel intended for the second quality, shall be branded "fine;" and each barrel intended for the third quality, shall be branded "middlings;" and in addition to the aforesaid brand, each barrel shall be branded "Indiana;" and for the inspection of flour, each inspector shall provide himself with a three quarters of an inch barrel auger, with which each barrel shall be bored into, so as to satisfy himself of the quality of the flour. Each barrel of beef or pork inspected, shall contain two hundred pounds avoirdupois; and the best quality of beef shall be denominated "mess beef;" and be so branded; and the second quality shall be denominated and branded "prime beef;" and the best quality of pork shall be denominated and branded "mess pork;" and the second quality shall be denominated and branded "prime pork;" and the third quality shall be denominated and branded "Indiana cargo pork;" and when any such flour, beef or pork shall be found musty, sour, tainted, spoiled, or otherwise unfit for market, the same by such inspector shall be condemned.

Flour, how branded.

Beef and pork how branded.

Damaged.

SEC. 6. If any person or persons shall alter or erase any brand or mark of said inspectors, so placed on any barrel of salt, flour, beef or pork, he or they so offending shall, on conviction thereof, forfeit and pay the sum of fifty dollars for every such offence, to be recovered in any court having cognizance thereof, one half to the use of the person prosecuting for the same, and the other half to the use of the county seminary, wherein the inspection may have been marked as aforesaid.

Penalty for altering brand.

This act to take effect and be in force from and after its publication.

CHAPTER LI.

An Act regulating the Interest of Money in the State of Indiana

[APPROVED FEBRUARY 1, 1831.]

Rate of interest to be six per cent. &c.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That creditors shall be allowed to receive interest at the rate of six per centum per annum, for all monies after they become due, on bond, bill, promissory note, or other instrument of writing; on any judgment recovered in any court of law, now or hereafter to be established in this state, or on any order or decree of a court of chancery or probate, for the payment of a specific sum of money, from the day of signing such judgment, order or decree, until effects be sold or satisfaction be made; likewise on money lent; on money for the forbearance of payment whereof an express promise has been made for the payment of interest; on money due on the settlement of accounts, from the day of liquidating the accounts between the parties and ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge, or retained after demand of payment; and on money withheld by any unreasonable or [and] vexatious delay of payment.

Agreement for more than six per cent. to be in writing.

SEC. 2. No person shall on any contract that may be made, directly or indirectly take, for the loan or use or forbearance of money or other commodity, above the rate or value of six dollars for the use or forbearance of one hundred dollars, or the value thereof, for one year, and so proportionally for any greater or less sums; unless the agreement to pay a higher rate of interest be made in writing and signed by the party to be charged.

CHAPTER LII.

An Act concerning Joint Rights and Obligations.

[APPROVED DECEMBER 30, 1817.]

Whereas much inconvenience and hardship have arisen to numerous citizens of this state, growing out of a principle of the common law of England, and adopted by this state, securing to the survivor or survivors of two or more joint tenants the part or parts of those deceased, to the preference and entire exclusion of the real and personal representatives of the deceased joint tenant: for remedy whereof,

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all manner of estate or estates, either real

or personal, legal or equitable, or thing possessed or holden by two or more in joint tenancy, the parts of those who may first die shall not accrue to the survivor or survivors, but shall descend or pass by devise, and shall be subject to debts, charges, curtesy or dower, or transmissible to executors or administrators, and be considered to every other intent and purpose, in the same manner as if such deceased joint tenant had been tenant in common.

Joint estates,
made estates
in common.

SEC. 2. That the representative or representatives of one jointly bounded with another for the payment of debt or for performance or forbearance of any act, or for any other thing, and dying in the life time of the latter, may be charged by virtue of such obligation, in the same manner as such representatives might have been charged, if the obligors had been bound severally as well as jointly.

Representa-
tive of a joint
obligor to per-
form his joint
contracts.

SEC. 3. This act to take effect from and after the publication of the same.

CHAPTER LIII.

An Act to regulate the mode of summoning and empannelling Grand and Petit Jurors.

[APPROVED, JANUARY 29, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be the duty of the board doing county business in each county, to cause to be selected from the list of taxable persons in the county, the names of eighteen grand jurors and twenty-four petit jurors, who shall be good, reputable freeholders or householders, resident in such county, for each and every term of the circuit court, for one year succeeding such selection, which shall be made at the May session of said board in each year; and in those counties where the term of the circuit court extends to two weeks, then twenty-four persons qualified as aforesaid, shall be selected as petit jurors for the first week, and twenty-four for the second week of each term, whose names shall be written on separate pieces of paper, and put into a box to be provided and kept for that purpose; and the clerk of the circuit court shall, in the presence of said board, draw from said box eighteen names for grand jurors, and twenty-four names for petit jurors for each and every term of said court, which does not extend by law to a longer time than one week; and where the term of any circuit court extends to two weeks, then twenty-four names shall be drawn and be marked and designated as petit jurors for the first week, and twenty-four names shall be drawn, marked and design-

C'ty boards
shall select
grand and pe-
tit jurors, and
how.

When court
sits 2 weeks.

Clerk shall
draw names.

Clerks shall make panels and record them.

Clerk shall issue venire.

Penalty on jurors for non-attendance.

County board may select jurors at any session.

No exemption because of age

Jurors in new counties, how selected.

Talesmen.

nated as petit jurors for the second week of each term of the said circuit courts, for the year ensuing such drawing as aforesaid; and the clerk shall also write the names of the said grand and petit jurors, on separate panels, distinguishing for which term of the circuit court the same have been selected, which panels he shall record in the order-book of the circuit court of the county.

SEC. 2. The clerk of the circuit court shall at least thirty days previous to the setting of the same, make out two writs, containing severally the panels of the grand and petit jurors selected as aforesaid for said term, and the said writs, under the seal of the said circuit court, direct to the sheriff of said county, commanding him to summons said jurors to appear at such term at the court house in said county, to attend to their duties as jurors as aforesaid.

SEC. 3. Each and every person, who shall be summoned as a grand or petit juror, under the provisions of this act, who shall, after having received ten days notice by the sheriff, neglect or refuse to attend as aforesaid, shall be fined in any sum not exceeding three dollars, at the discretion of the circuit court, on the motion of the prosecuting attorney, notice having first been given by scire facias or attachment to the offending party, at least ten days previous to the making of such motion.

SEC. 4. In all cases where the board doing county business as aforesaid, shall omit to make the selection of grand and petit jurors, at their May session in any year, as above provided for, it is hereby made their duty to make such selection, at their next or at any succeeding term; and the said board in making such selection, together with all other persons concerned, shall be governed by the same rules, and [be] subject to like restrictions and penalties, as are herein before provided for.

SEC. 5. Nothing in this act shall be so construed as to prevent persons over the age of sixty years from serving as grand or petit jurors, nor to prevent the board doing county business in any new county, wherein a tax has not been levied, or where there is no tax list, from selecting grand and petit jurors from among the citizens of said county, at their discretion, nor to prevent jurors from being obtained as at common law, to make up any deficiency in the regular panel.

CHAPTER LIV.

An Act regulating the Jurisdiction and Duties of Justices of the Peace.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the jurisdiction of justices of the peace, in

criminal cases, shall be co-extensive with the limits of the county in which they shall be respectively chosen. They shall be conservators of the peace throughout the same; and each justice is authorized and required on complaint made on oath, or on view, without complaint, forthwith to issue his warrant, and cause any person charged with any crime, assault and battery, affray or other breach of the peace, to be arrested and brought before him or some other justice in said county, to answer to such charge or complaint, and be further dealt with according to law, and such person to commit, discharge or let to bail, as the case may require, and to recognize such witnesses as the nature of the crime or offence may render expedient, conditioned that such witnesses shall attend on the first day of the next circuit court, to be holden in the county in which the crime or offence shall be tried, to give evidence before such court or the grand jury, and not depart without leave of said court. The condition of a recognizance of any party required to appear and answer before the circuit court, shall be that such party shall appear before such court on the first day of its term, next after the taking of such recognizance, to answer to the particular charge or complaint made against him, abide the judgment of the court therein, and not depart from such court without leave. Justices shall have power on complaint on oath, to issue warrants and take recognizances for keeping the peace and good behaviour, and search warrants for stolen goods.

Jurisdiction of J. P. in criminal cases.

Shall issue warrant, on view or complaint.

Party to be committed or let to bail, & witnesses to be recognized, &c.

Condition of recognizance of witnesses.

Recognizance to keep the peace, &c.

SEC. 2. All recognizances for the appearance of parties or witnesses in the circuit court, shall be returned by the justice taking the same, to the clerk of such court or to the prosecuting attorney of the circuit, at as early a day as practicable, and at furthest by the time conditioned for the appearance of the party or witness named in the recognizance.

Recognizance how & where returned.

SEC. 3. Whenever it shall become necessary to postpone or continue the examination or trial of any person charged with a crime or misdemeanor, before a justice, such justice shall cause such defendant, if the offence be bailable, to enter into a recognizance for his appearance at the time and place of trial or examination, abiding the order of the justice in such case, and not departing without leave; witnesses for the state in such case, may also be recognized, to appear and testify at the proper time and place.

Examination of criminal may be continued and party recognized.

SEC. 4. All recognizances entered into before a justice, shall be in such sum and with such security as the justice in his sound discretion may require, made payable to the state of Indiana, conditioned as the nature of the case may require, signed and sealed by the recognizers, and attested and approved by the justice,

Recognizance amount of, and how payable.

Jurisdiction
in *petit misde-*
meanors, &c.

SEC. 5. Justices shall inquire into, in a summary way, and punish by fine not exceeding three dollars, trivial breaches of the peace and other *petit misdemeanors*, where the penalty affixed by law shall not exceed three dollars; they shall also have jurisdiction in cases of assault and battery, affrays or other breaches of the peace, to the extent of twenty dollars, in the manner and under the restrictions and limitations hereinafter mentioned, and all fines collected or received by any justice under the provisions of this act, shall be paid over by him to the trustee of the county seminary of the proper county, for the use of such seminary.

Fines to be
paid over to
seminary trustee.

Defendant,
when he may
elect to be tried
by J. P. or
jury, or be recognized.

SEC. 6. In prosecutions before justices, for an assault and battery, affray or other breach of the peace, the defendant shall be tried by the justice alone, demand a jury, or be recognized to the circuit court, at his election; and if the defendant be found guilty before such justice, the fine shall not be less than one dollar nor more than twenty dollars. If on hearing the case submitted to him, the justice shall be of opinion, that it is of a nature so aggravated that adequate punishment cannot be inflicted under this act, he shall recognize the defendant to the circuit court in the manner above provided.

In aggravated
case, the party
to be recognized to
circuit court.

SEC. 7. In cases contemplated by the sixth section of this act, to be tried before a justice, he shall, at the request of the defendant, postpone the trial, on cause shewn, for a reasonable period, not less than six days, unless the defendant consent to a shorter time; and shall also, on such affidavit of the defendant as is by this act required for a change of venue in civil cases, direct the case to be tried before, and transfer the papers to, some other disinterested justice of the proper county, taking in either case, a recognizance from the defendant or defendants, to appear and answer, and if necessary, a recognizance from the witnesses for the state, to appear and testify at the proper time and place, before the proper justice, and not depart without leave.

Defendant
may have
continuance
six days.

Change of
venue as in civil
cases, and
proceedings
therein.

SEC. 8. Whenever a justice shall give judgment against a defendant under this act, for a fine and costs, it shall be part of his judgment that the defendant stand committed until the fine and costs be paid or replevied; and the defendant may replevy the same in any case, by entering sufficient bail on the justice's docket, for the amount of the fine and costs, for the term of three months; and on the defendant's refusal to pay said fine and costs or to replevy the same, such defendant, unless a female, shall be committed to the common jail of the county.

Defendant
shall pay or
replevy fine,
or be committed.

Insolvent
defendant, when
and how discharged.

SEC. 9. If any defendant committed under the provisions of the preceding (eighth) section of this act, shall, after having been imprisoned one day for every fifty cents of the fine imposed upon him, take the oath required of the petitioner

in the act concerning insolvent debtors, and in all other respects comply with the requisitions imposed by that act upon such petitioner, such defendant may be discharged from imprisonment, as other insolvent debtors are; and in all cases where such defendant shall be discharged, in manner aforesaid, the costs of keeping such offender in prison, shall be paid by the proper county, as other county expenses are; and said county shall afterwards be considered a creditor of said insolvent defendant, to the amount of said expenses, and to that extent shall be a privileged creditor, having priority of all others, and be first paid; and suit therefor may be brought by and in the corporate name of the board doing county business for such county.

Take oath,
&c. as insolvent debtor.

Costs of keeping to be paid by county.

County, a privileged creditor.

SEC. 10. No trial shall be held before a justice, under this act, for an assault and battery, affray, or other breach of the peace, unless the person on whom the assault and battery is alleged to have been committed, or the witness or witnesses, or some of them who were present at the affray, or other breach of the peace, on trial, shall be present at the trial and examined as witnesses, except in cases where the offence shall have been committed in the presence and view of the justice, or where such injured person, witness or witnesses, shall not at the time reside in the county, or, having been duly subpoenaed shall fail to attend; or shall be legally incapable of giving testimony in such case.

Injured party to be present at trial before J. P.

Except in view of J. P.

SEC. 11. Any defendant who may be convicted under this act, before a justice, shall have the privilege of appealing from the judgment of the justice, within thirty days from and after the rendition thereof, to the circuit court of the proper county, by entering into a recognizance, conditioned for the payment of the costs before the justice and in said court, if judgment be therein given against the appellant in such case; and when any appeal is so taken, the justice shall certify his proceedings to the next circuit court, and recognize the witnesses for the state, in the sum of fifty dollars each, and shall file a transcript of his proceedings with the recognizances and other papers, with the clerks of such courts, on or before the first day of the term next after taking the appeal; and such case when so appealed, shall commence *de novo*, by indictment in such court, and no further notice shall be taken of the proceedings before the justice, than to tax the costs which may have accrued before the same.

Appeal from assessment of fine.

Recognizance in appeal.

How appeal shall be sent up to circuit court.

After appeal, the case to commence *de novo*, by indictment.

SEC. 12. Nothing herein contained, shall be construed to prevent grand juries from presenting any person guilty of any offence against the public peace, unless such person shall have been punished therefor or acquitted thereof.

Examinations before J. P. no bar to indictment unless, &c.

SEC. 13. Whenever any defendant, prosecuted under this act, shall fail or refuse to give such bail or surety as may

Defendant failing to give

bail, to be committed.

be required of him, such defendant, so failing or refusing, shall be committed to the common jail of the proper county, there to remain until he shall give such bail or surety, or be otherwise legally discharged.

J. P. to keep and record list of fines.

SEC. 14. Each justice shall make out a list of all fines and penalties, by him assessed against, or collected of, each and every individual, and record such list in a book to be kept by such justice for that purpose; and such justice shall on the first day of each session of the board doing county business for his county, return such list of all fines and penalties, imposed or collected by him since his last return at the preceding session of such board, as herein required; and such list, so returned, shall be under the hand and seal of such justice, and verified by his oath, which oath the clerk of such board, or any justice, is hereby authorized to administer. Each justice of the peace, shall on or before the first day of each term of the circuit court of his county, deliver or cause to be delivered to the clerk thereof, a succinct certified statement in writing, of every person by or before him tried, since the preceding term of said court, for any affray, assault and battery, or other petit misdemeanor, prosecuted on behalf of the state, specifying therein the name of such person tried, for what offence, and when committed, and whether such trial resulted in a conviction or acquittal; and such clerk shall deliver every such statement, on the day aforesaid, to the foreman of the grand jury; *Provided*. That it shall not be necessary to include in such statement, the name of any person who shall be recognized on such trial, or who shall have taken an appeal on any judgment consequent thereon.

List of fines to be returned to such county board.

J. P. to report to clerk of C. court list of persons tried before him.

Clerks to record list of fines, & make out copy for seminary trustee and prosecuting attorney.

SEC. 15. The clerk of such board doing county business, shall record such list of fines, so returned, at full length on the records of such board; and on the first day of each term of the circuit court of the county, make out and certify two copies of such returned list, and deliver one of said copies to the prosecuting attorney of his county or circuit, and the other, to the trustees of the county seminary.

Penalty on J. P. or clerk for neglect, &c.

SEC. 16. Should any justice neglect or refuse to comply with the requisitions of the fourteenth section of this act; or any clerk neglect or refuse to comply with the requisitions of the fifteenth section of this act; such justice or clerk, shall for each such neglect or refusal, be liable to a fine of not less than twenty dollars, for the use of the proper county seminary, to be recovered by indictment, in the circuit court of the proper county.

J. P. may hold to bail to keep the peace, for

SEC. 17. Any justice may, *ex officio*, bind all those to keep the peace, who in his presence make any affray, or who threaten to kill or beat another, or maliciously or mischievously to destroy or injure the property of another; and such

as are brought before him by the constable, for a breach of the peace in his presence, and all such persons, as, having been before bound to the peace, have broken the same and forfeited their recognizances. Also whenever any person, having just cause to fear that another will burn his house, or do him or his family a personal injury, by killing, imprisoning or beating, or maliciously or mischievously injure or destroy his property, or procure others to do so, shall pray surety of the peace, and make oath that he hath just cause, and is actually under fear or apprehension as aforesaid, and establish the truth of his complaint by shewing the menaces, threats, attempts or lying in wait of the defendant, by his own oath or other competent witness or witnesses, and will also further swear, that he does not make such complaint, or pray such surety, from any malicious motive, or a disposition to vex or harrass the defendant, the justice shall take jurisdiction and bind the defendant or defendants over to answer at the next circuit court of his proper county, in such reasonable sum as he in the exercise of a sound discretion may deem just and right.

threats to injure property, &c.

Affidavit for peace warrant, &c.

SEC. 18. The powers of justices of the peace, shall be co-extensive with the townships in which they may respectively be elected and reside, in civil cases; and their jurisdiction shall extend, under the restrictions and limitations hereinafter provided, to any sum not exceeding one hundred dollars, in actions of debt and assumpsit; and to any sum not exceeding fifty dollars, in all other actions founded on contract; and to any sum not exceeding twenty dollars, in all actions founded on tort; except in the action of trover, in which their jurisdiction shall extend to fifty dollars; and in all cases of confessed judgment, their jurisdiction shall extend to any sum not exceeding one hundred dollars, and from confessed judgments there shall be no appeal: but nothing in this section shall be so construed as to give to a justice, jurisdiction in any action or suit, for the recovery of damages, for any trespass, wrong or injury done to, or committed against, the real or personal estate or property, or person, of another, where the damages demanded shall exceed twenty dollars; nor in any case of trover and conversion, or other case founded on tort, where the damages demanded shall exceed twenty dollars; nor in any case where the title to lands or tenements shall come in question; nor in actions of slander; nor in any action for the recovery of damages for the breach of any marriage contract; nor in any action of replevin where the value of the property claimed shall exceed twenty dollars; nor in actions of detinue. In all actions of debt or assumpsit, wherein the sum due or demanded shall be over fifty dollars, and not exceed one hundred dollars, exclusive of interest and costs.

Jurisdiction in civil cases.

Restrictions.

Concurrent jurisdiction of circuit court and J. P.

Exclusive jurisdiction of J. P. in civil suits.

Plaintiff suing in C. courts, to pay costs in certain cases.

Jurisdiction of J. P. in *ne exeat* and attachment.

Witnesses may be summoned, &c. throughout county.

Judgments by confession before J. P. to be on affidavit, &c.

Docket of J. P. how kept.

Transcript may be demanded. Summons to be first process against a householder, &c.

justices and circuit courts shall have concurrent jurisdiction; and the plaintiff in such actions, shall be at liberty to commence suit, either before a justice, or in the circuit court, at his election. But all other actions, except as in this section otherwise provided, wherein the sum due or demanded shall not exceed fifty dollars, exclusive of interest and costs, shall be commenced before a justice of the peace; and suits on all notes, due-bills, or other instruments of writing, given for the payment of money, or other valuable articles, that have been reduced by credits endorsed thereon, to an amount not exceeding fifty dollars, exclusive of interest and costs, shall be commenced before a justice of the peace; and should any person, contrary to the foregoing provisions, commence suit in the circuit court, such person shall pay all costs accruing thereon. Justices shall also have, and are hereby invested with power and authority, where the sum or amount in the particular case or action, shall not exceed their jurisdiction, as limited or defined by this act, to issue writs of *ne exeat*, and domestic attachment, and proceed thereon, to final trial and judgment, in the cases and manner prescribed, or to be prescribed, by this or some other act or law of this state.

SEC. 19. Any justice may grant subpoenas for witnesses, to either party concerned in the cause pending, but such party shall not be allowed fees for travelling and serving the same, if performed by himself; and the powers of justices, to summon and coerce the attendance of witnesses, shall be co-extensive with their respective counties.

SEC. 20. Whenever any person shall voluntarily appear before any justice, to confess judgment in favour of another, the justice, before taking the confession or entering judgment, shall administer an oath or affirmation to the person so appearing to confess, that he does not so confess judgment in favour of the plaintiff in said confessed judgment, to defraud any of his (the defendant's) creditors, but that he is justly indebted to the plaintiff, to the full amount for which he so confesses judgment on the particular cause of action shewn to the justice, which oath or affirmation and cause of action, he shall file and enter as in other cases.

SEC. 21. Every justice shall keep a docket, in which he shall make fair and accurate entries, of all actions and suits instituted or brought before him, with his proceedings thereon, and furnish a transcript of his proceedings, in any case, to any person applying therefor, and paying his fee for the transcript.

SEC. 22. When the defendant is a householder within the county, and resides within the same, a summons shall be the first process to be issued by virtue of this act, on which summons the justice shall endorse the precise sum

demanded by the plaintiff, together with the costs that have accrued; and such summons shall specify a certain time, not less than three, nor more than twenty days from the date thereof, and also a certain place, at which the defendant shall appear, and be served at least three days before the time of such appearance, by reading the same to the defendant, or by serving him with a copy if required, or by leaving a copy at the residence of the defendant, in case he be absent; but if such absent defendant shall have left home on business or otherwise, for any time which will render the time of his return uncertain, the constable if apprized thereof, shall not leave a copy, but return the summons, noting the fact in his return; and in such case, an *alias* summons may issue, on the return of the said defendant; and the same course may be pursued in cases of *scire facias*. But in all cases where it shall appear, from the oath or affirmation of any person, that the plaintiff will be in danger of losing the benefit of his action, unless the defendant be arrested, the justice shall issue a *capias ad respondendum*, which shall be proceeded on as hereinafter provided. And where the plaintiff lives out of the county or township, and his demand shall be on bond, promissory note, bill or judgment, sent to any justice for collection, the justice shall determine the most proper process to secure the demand to the plaintiff, any thing hereinbefore contained to the contrary notwithstanding. No person shall be bound to answer to any summons, *capias* or other process, issued by a justice, under this act, in civil cases, in any other township, than the one in which such defendant actually resides, or where the debt was contracted, or the cause of action accrued, or where the defendant may be found, unless there shall be no justice who can legally issue such summons, *capias* or other process.

SEC. 23. A *capias ad respondendum* shall be the proper process under this act, in all cases when [where] the defendant shall not be a resident and householder of the county where the process issues; upon which *capias*, the justice shall endorse the precise sum demanded, together with the costs which have accrued; and the said *capias* shall be made returnable forthwith after service thereof; and the constable executing the same, shall, according to the command thereof, forthwith, after taking the defendant, convey him before the justice, who shall thereupon either cause the defendant to give bail for his appearing and abiding the event of the suit, or on neglect or refusal to give such bail, order the constable to convey him to the jail of the county, there to be kept in custody till the time appointed for trial, which shall not exceed three days, unless for good cause shewn, from the day of the return of the *capias*; or the jus-

Endorsement.

To be served three days by reading or copy.

Not to be served copy, if defendant is absent on business, &c.

Capias may issue against householder, on affidavit.

When plaintiff lives out of c'ty or township, J. P. to determine the kind of process.

Where suit may be bro't.

Capias to issue where defendant is not a householder & resident.

Sum to be endorsed.

On return of *capias*, defendant to give bail, or be committed, &c.

Plaintiff to be notified.
Const's return

tice may direct the constable to hold the defendant in custody, until the plaintiff shall have notice and time to attend, not exceeding two days, and proceed to trial; and the constable executing such capias shall endorse thereon the execution thereof, and sign his name thereto.

Recognizance of special bail, form of.

SEC. 24. The recognizance of bail to be taken, as is above provided, may be in the following form, to wit:

"State of Indiana, County, Township, ss.

Whereas, A. B. has been arrested, and is in custody, at the suit of C. D. in an action of , for the sum ; now, therefore, I, E. F. do acknowledge myself special bail for the said A. B. in said action, in the sum of the condemnation money and costs, to be levied of my goods and chattels, lands and tenements, and for the want thereof, on my body, if default be made in the condition of this my undertaking, which is, that said A. B. shall be and appear before J. H. a justice of the township aforesaid, at his office therein, on the day of , at o'clock , to answer to said suit; and if judgment be given against him therein, that he will pay the condemnation money and costs, or render his body in execution therefor; or that, in default thereof, on his part, I, the said E. F. will do the same for him.

(Signed) E. F. [SEAL.]

Taken and acknowledged, this day of 18 , before me, J. H., J. P. [SEAL.]"

Any bail may surrender his or their principal or principals to the constable before the trial, or to the justice at the time of trial, in discharge of the recognizance; and further proceedings shall be had thereon, as if no such recognizance had been entered into.

Trial, when parties appear.

SEC. 25. When the parties to any suit appear, at the time and place appointed for trial, the justice shall proceed to hear and determine their allegations and proofs, and shall thereupon give judgment, with costs of suit, according to law and justice; unless he shall think proper, on the application of either party, when justice requires it to adjourn the trial; which adjournment shall not be for a longer time than twenty days, unless by consent of both parties; or unless he shall grant a continuance of the cause, on account of absent testimony, as hereinafter provided, which continuance shall not be for a longer period than sixty days, at any one time.

Adjournment, not more than twenty days, unless by consent.

Plaintiff failing to attend, non-suit, unless, &c.

Def't failing to appear, judgment, &c.

If, at the time and place appointed for trial, the plaintiff shall not appear personally or by agent or attorney, and it appearing that he was informed of the time and place of trial, if his claim shall not be established by testimony, either oral or written, the justice shall enter judgment against him, as in case of a non-suit: If the defendant, having had lawful notice, shall not appear, at the time and place appointed for trial, personally, or by agent or attorney, and no just cause

appearing for such non-appearance, the justice may, at the request of the plaintiff, hear the proofs and allegations of the plaintiff, and determine the cause, and enter up judgment: If both parties fail to attend, the justice may either enter a non-suit against the plaintiff, or continue the cause to some future day, and cause the parties to be notified thereof.

Neither party attending, non suit or continuance.

SEC. 26. In all cases instituted or pending before a justice, the plaintiff shall, before the issuing of the process, or at least three days prior to the time set for trial, in cases commenced by summons; and in cases commenced by capias, in like manner three days before the time of trial, if the plaintiff shall have been so long notified of such time, otherwise any time before trial, file with the justice, a concise statement in writing, of his cause of action, or of the nature of the wrong or injury of which he complains, if the same be founded in tort; or, in actions of contract, the account, note, bond, bill or other writing, bill of particulars, or other statement in writing of the nature of the demand, on which he intends to rely; and in like manner, the defendant, if he have any special matter of defence, in actions of tort, or any special matter of payment, set off, or other affirmative plea, in actions of contract, shall before trial, file the same, or a succinct statement thereof in writing; and either party may be permitted by the justice, to amend his statement, *before entering into trial*; and on the trial, the plaintiff shall not be permitted to give evidence of any cause of action not contained in his statement, nor the defendant to give evidence of any matter of defence not contained in his statement: And in all cases of appeal from the judgment of any justice or justices, to the circuit court, the justice or justices shall send up to said court, such written statements of the cause of action and defence of the parties, with the transcript and other papers in the cause; which written statements shall not be set aside by the court for the want of form, but shall be acted upon by the court, without any substantial amendment or alteration whatever: *Provided*, The defendant shall always have the benefit of the general issue, should he wish it, without pleading the same, except where the same denies the execution of an instrument which is the foundation of the action or defence, in which case the defendant shall not have the benefit thereof, unless it be verified by oath or affirmation.

Plaintiff to file cause of action, &c.

Defendant to file statement of defence, &c.

Parties may amend, before trial. Parties restricted on trial, to their written statements. On appeal no substantial amendment allowed, in circuit court.

Defendant to have benefit of the general issue.

SEC. 27. In all cases before a justice, where either party makes affidavit, that he has a material witness, or other material testimony, out of the county; or that his own place of residence is out of the county where the suit is pending, shewing where such place of residence is, or such witness or testimony may be, and the probability of procuring the same within a reasonable time, and that such affidavit is not made

Depositions, when to be taken.

Continuance,
not longer
than 60 days.
Dedimus.

Depositions,
how taken &
certified.

Depositions,
with or with-
out dedimus.

Notice.

Authentica-
tion.

When dedi-
mus not neces-
sary.

Adjournment
with or with-
out costs, at
discretion of
J. P.

Change of ve-
nue, when
granted in
civil cases.

Party obtain-
ing change, to
pay costs.

J. P. to trans-
mit papers.

Jurisdiction
of J. P. to
whom cause
is sent.

for delay merely, but the furtherance of justice; the justice shall on good cause shewn, by such affidavit or otherwise, continue the cause for any time not exceeding sixty days, and if required, issue a dedimus to any justice of the peace or other competent authority of the proper place, for the taking of depositions in such case, at such time and place as may be mentioned in the notice, allowing each party to ask questions; and the deposition or depositions so taken, subscribed and sworn to by the witness or witnesses, and certified by the justice or other authority taking the same, to seal up and transmit to the justice before whom the suit is pending, taxing on the depositions the legal fees of taking the same; and either party may take the depositions of witnesses living out of the county where the suit is pending, with or without a dedimus, as the case may require; the party taking the same, first giving the adverse party, his agent or attorney, reasonable notice in writing, of the time and place of taking the same; and where the justice or other authority, before whom the same are to be taken, shall be named in the dedimus or notice, the official certificate of such justice or other authority, shall be deemed a sufficient authentication: But no dedimus shall be necessary where the witness resides in this state. All adjournments and continuances granted by a justice, may be with or without costs to the party applying therefor, in the sound discretion of the justice, according to the circumstances of the case, and as nearly as may be, agreeably to the usages and customs of courts of record.

SEC. 28. If on the return of the summons, *capias* or other original process, before a justice, either party shall make oath that he verily believes he cannot receive a fair trial, owing to the prejudice of the justice before whom the process is returned, or of the citizens of the township where such justice resides, or that the other party has an undue advantage over him in such township, and file a certified copy of such oath before such justice, before the commencement of the trial, such justice shall grant a change of venue, to and before some other justice of the same township or county who may be disinterested, as the case may require, on the party applying for such change, if defendant, paying the costs occasioned thereby, and if plaintiff, paying all costs which have accrued previous to the change, as well as those occasioned thereby: And the justice granting such change, shall thereupon deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to and before whom the change may be granted, who shall proceed therein in the same manner, and have the same jurisdiction, powers and duties in all respects whatever, as if such suit had been originally instituted before him.

SEC. 29. When parties agree to enter without process, before a justice, any action or suit in this act made cognizable before him, such justice shall enter the same on his docket and proceed to trial, judgment and execution, in all respects, in the same manner as if original process had been issued, served and returned.

Trial by consent without process.

SEC. 30. Every judgment of any justice, shall be entered on the day of trial, or within four days thereafter; and the justice may, on motion and for cause shewn, grant to either party a new trial in any cause, according to the usage and custom of courts, at any time within four days after entering judgment, and set a time for the new trial, of which time the adverse party shall have at least three days previous notice. Such adverse party shall also have reasonable notice of the motion for a new trial, if the same be not made on the day of the former trial, or in the presence of such party.

Judgment to be entered in four days from trial.

New trial. Notice.

SEC. 31. If in any cause, it shall appear at the trial, that there is a balance due from the plaintiff to the defendant, the justice shall enter judgment against the plaintiff in favour of the defendant, for the sum so appearing to be due, with costs; and such defendant shall be entitled to execution therefor, in the same manner as if he had been plaintiff in the cause.

Judgment for defendant for balance due, &c.

Execution in favour of defendant.

SEC. 32. When any judgment may be entered against any party not present at the trial, if such party appear within ten days, and pay or give security for the costs, and also enter into bond with sufficient security to pay or satisfy the judgment that may be rendered in the case, and request the judgment to be opened, the justice may open the judgment and grant a new trial, and appoint a time therefor, of which the party obtaining the new trial shall notify the adverse party, his agent or attorney, if resident in the county, at least six days prior to the time so appointed; and if such adverse party, his agent or attorney, do not reside in the county, the party obtaining the new trial shall leave a written notice thereof, in the office of the justice granting the same, at least ten days prior to the time set for such new trial.

Judgment rendered in absence of party, how opened, &c.

Costs to be paid or secured. Bond. New trial.

Notice.

SEC. 33. Where there is no justice resident in the proper township, or none who is not father, brother or son of the parties in any cause, or legally interested in the event of the suit, then the nearest and most convenient justice in some adjoining township, who is not of kin to either of the parties, in either of the degrees aforesaid, or interested as aforesaid, shall have full and complete jurisdiction of such cause, in the same manner as if he had been resident in the proper township.

When J. P. of adjoining township shall have jurisdiction.

SEC. 34. At any time before trial, the parties agreeing thereto, may have the cause submitted for decision to three

Arbitrators, when and how chosen.

Arbitrators to be sworn.	disinterested men, to be chosen by the parties, as arbitrators, who, if present, shall hear and determine the cause, on oath or affirmation to be administered by the justice, to decide impartially; but if not present, the justice shall issue a summons for them to attend at a certain time and
If not present, to be summoned.	place agreed on by the parties, or fixed by the justice, if they do not agree thereon, and noted on his docket, which summons may be served by the constable, or one of the parties or some other person, as they may agree; and the arbitrators, when met and sworn, at the time and place appointed, shall if the parties or either of them attend, proceed to hear and determine the cause, according to the allegations and proofs, and they or a majority of them shall make out and sign an award, and return the same to the justice, by a certain day, to be fixed and noted on the docket at the time of choosing the arbitrators; and on such award being so returned to the justice, he shall on the day so fixed for the return thereof, enter the same on his docket and render judgment thereon; which judgment shall be conclusive to both parties, unless it shall appear to the circuit court on an appeal, or to the justice rendering such judgment, within ten days thereafter, that such award was obtained by fraud, corruption or other undue means; and whenever satisfactory proof thereof shall be adduced before such justice, within the period aforesaid, it shall be lawful for him to open his judgment and set aside such award, at the costs of the party so obtaining the same, and proceed to final trial and judgment in such case, as if such award had never been made, or no arbitrators chosen: And the circuit court, when an appeal is taken, shall render judgment on such award, in the same manner the justice should have done, which shall in like manner be conclusive on the parties, unless it shall appear to the court, that the arbitrators have made a plain and palpable mistake of law, to the injury of one of the parties, or by satisfactory proof that the award was obtained by fraud, corruption or other undue means; in either of which cases, the court shall set aside such award, and proceed to final trial and judgment as in other like cases of appeal. Arbitrators chosen and acting under this section, shall each be entitled to fifty cents per day for their services, to be taxed and collected as other costs are. Witnesses may also be subpoenaed and compelled to attend and testify before the arbitrators, and the costs thereof taxed with the costs of the suit; and the arbitrators and witnesses may be sworn by any justice of the proper county.
Award.	
Returned to J. P.	
Judgment thereon. Award conclusive.	
May be set aside for fraud, within ten days.	
Cause to proceed.	
Proceedings on award in circuit court on appeal.	
Pay of arbitrators.	
Parties when and how made witnesses.	Sec. 35. In all trials in actions of debt or assumpsit, before any justice, it shall be lawful for the plaintiff, if the defendant deny the debt, demand or account, to require such defendant to answer, on oath or affirmation, to such charge;

and if thereupon the defendant deny the same, the plaintiff shall not have judgment, unless he establish his claim by legal evidence; and whenever the defendant in any such action shall allege matter of payment or set-off to the plaintiff's demand, or plead or set up any other plea or defence in bar of the same, he may in like manner, require the plaintiff to answer such allegation or plea, on oath or affirmation; and upon the refusal of either party to answer as aforesaid, the justice shall enter up judgment as if the matter so charged or pleaded were confessed; and the plaintiff or defendant, when so required to be sworn, at the request of his adversary, shall be at liberty to testify to the whole matter of controversy, as a disinterested witness might do, the justice or jury in all cases judging of his credibility as in other cases; and in all such actions, any party residing in the county where suit is pending may, at the request of his adversary, be subpoenaed and compelled to attend and testify as aforesaid, in the same manner and under the same penalties, as other witnesses; and the deposition of any party residing out of the county where the suit is pending, may in such cases be taken by his adversary, and read in evidence in the same manner as the deposition of any other witness. And in the trial of all appeals in such cases, in the circuit court, the provisions of this section shall be adopted and pursued.

Defendant,
when to be
sworn.

Plaintiff when
to be sworn.

Party may be
subpoenaed to
testify.

If party is out
of county, de-
position tak-
en.

Circuit court
shall try ap-
peals, in like
manner.

Jurisdiction
of J. P. in re-
plevin.

SEC. 36. Justices are hereby invested with jurisdiction to issue writs, and try actions of replevin, where the value of the property claimed by the plaintiff shall not exceed twenty dollars, and proceed to final judgment and execution therein, in the manner and cases herein after prescribed, as fully and completely as the circuit courts may or can do, in actions of replevin made cognizable before them; and to issue all the legal and necessary writs and process in an action of replevin.

SEC. 37. Whenever any person shall tortiously take and unlawfully detain, or lawfully acquire and unlawfully detain any personal goods and chattels of another, of the value of not more than twenty dollars, the party aggrieved may replevy the same, by writ to be issued by a justice, in the manner hereinafter prescribed. But nothing herein contained shall be so construed as to extend the privilege of said writ, to any execution defendant, to replevy property taken by virtue of an execution, by any officer of this state.

In what cases
replevin will
lie before J. P.

SEC. 38. Before such writ of replevin shall be issued, the plaintiff therein, his agent or attorney, shall make an affidavit before some justice or judge of this state, that the defendant in such case, (naming him) doth unlawfully detain from the plaintiff, the personal goods and chattels

Affidavit in
replevin.

which such plaintiff seeks to replevy, setting forth the article or articles.

Writ of replevin, how issued.

Command of writ.

SEC. 39. That when such affidavit is made and filed with the justice, he shall at the request of the plaintiff, his agent or attorney, forthwith issue a writ of replevin, to any constable of his township, commanding him to take into his custody, the goods and chattels mentioned and described in such affidavit, and them safely keep, until such plaintiff shall satisfy and make him safe, by good and sufficient pledges, that he will well and truly prosecute such writ to effect, and return such goods and chattels to the defendant, if he succeed in his defence, and pay to said defendant such damages as may be awarded him, in case of his so succeeding in his defence; and on his so succeeding, such return shall on the final hearing of the cause be awarded by the justice, or in case of appeal by the circuit court, and on being so satisfied and made safe, to deliver such goods and chattels to the plaintiff in the writ, and summon the defendant to appear at a time and place to be named in the writ, to answer the plaintiff of and concerning the tortious taking and detention, or unlawful detention, as the case may be.

Bond to prosecute replevin, &c.

SEC. 40. The constable to whom such writ may be directed, before he delivers the goods and chattels taken by virtue thereof, to the plaintiff therein, shall take from such plaintiff a penal bond in double the value of the property replevied, with sufficient security, to the acceptance of such constable, conditioned that such plaintiff shall well and truly prosecute said writ to effect, and return such property to the defendant, if on the final hearing of the cause, such return be awarded by the justice or court trying the same; and also pay such damages as may be awarded to the defendant, if he succeed in his defence in such cause. And if the plaintiff do not prosecute his said writ to effect, or if the defendant succeed in his defence to such action, the constable shall, on request, assign such bond to the defendant, who may thereupon commence suit thereon in his own name, after the same becomes forfeited, and recover the value of the property replevied, together with costs, and such damages as may be deemed just and reasonable. If the plaintiff succeed in the action, the justice, court or jury trying the same, shall give the plaintiff such damages as may be deemed just and reasonable, for the tortious taking and detention, or [the] unlawful detention only, as the case may be, of the property replevied.

Constable to assign forfeited bond to defendant; and suit may be brought.
Damages.

If bond not given, in 24 hours, goods to be returned to defendant.

SEC. 41. If the plaintiff in replevin shall not, within twenty-four hours after goods and chattels shall have been taken into possession by the constable, by virtue of said writ of replevin, execute and deliver to such constable, a

bond as before directed, such constable shall forthwith, after the expiration of that time, restore such goods and chattels to the person from whom the same shall have been taken, taking his receipt therefor.

SEC. 42. On such bond being duly executed, the constable shall deliver the goods and chattels replevied to the plaintiff, and summon the defendant to appear and answer, according to the command of the writ of replevin, and make return of such writ, with the time and manner of service; and the suit shall then proceed to final hearing and judgment, as in other cases; and the justice shall have power to issue all necessary writs and process, for carrying his judgment and powers into full and complete effect: but double costs shall not be recovered or taxed in any action of replevin, under this act.

On bond being given, goods to be delivered to plaintiff.

Further proceedings.

Double costs not taxable.

SEC. 43. Executions issued by a justice, shall operate as a lien on the personal property of the judgment debtor named in the execution, in the county where the same shall be issued, from the time when the same shall be delivered to a constable for service; which time such constable is hereby required to endorse thereon.

Executions, when a lien on personal property. Constable to endorse time of receiving.

SEC. 44. In all cases hereafter, when any judgment debtor shall deliver to any constable, on execution against such debtor, any property not belonging to such debtor, whereby a delay in the collection of the demand named in such execution shall be produced, such debtor shall be liable to pay the amount of such demand, by an alias *fi. facias*, or writ of *capias ad satisfaciendum*, as the judgment creditor in such case may choose, together with twenty per cent. in damages thereon, to the use of such creditor.

Penalty on debtor giving up, on execution, property not his own. Alias *fi. fa.* or *ca. sa.*, with 20 per cent. thereon.

SEC. 45. On all judgments rendered by justices, on any and all causes of action, except where otherwise specially provided for by statute, on the judgment debtor's entering good and sufficient security, on the proper justice's docket, where the judgment is entered, for the amount of such judgment, interest and costs, there shall be a stay of execution, if the sum shall not exceed six dollars, thirty days; if over six, and not exceeding twelve dollars, sixty days; if over twelve, and not exceeding twenty dollars, ninety days; if over twenty, and not exceeding forty dollars, one hundred and twenty days; and if over forty dollars, one hundred and fifty days; and if such bail be not entered, or the judgment fully paid and satisfied, the justice, unless otherwise directed by the judgment creditor, shall issue one execution, and in all cases where there shall be a return that property taken is not sold for want of time or bidders, an alias or venditioni exponas on such judgment, returnable to such justice within thirty days from the date thereof, directed to some constable of the proper township, reciting the rendition of the

Stay of execution.

For want of bail, or payment, execution to issue.

Recital and command of execution.

When bail may be entered and execution re-called. Property, how and where advertised and sold.

After stay expired, a fi. fa. shall issue vs. judg't debtor. On fi. fa. returned unsatisfied scire facias vs. bail.

Scire facias served and returned, like a summons.

Judgment and execution vs. bail.

No stay thereon. Proviso.

Remedy for bail, fearing principal's insolvency.

Affidavit.

Execution vs. principal.

judgment, with the date and amount thereof, and commanding such constable to levy and make the debt, or damages and costs, embraced in and by such judgment, with interest and accruing costs, of the goods and chattels of such judgment debtor, to be found in his county; but if such debtor shall enter sufficient bail as above provided for the stay of execution, within ten days, or before sale of property on such execution, the justice shall recall the same. All property to be sold on execution by a constable, shall be by the constable advertised at three of the most public places in the township where the same may be found and seized, at least ten days prior to the day of sale, and the sale shall be held between the hours of ten o'clock A. M. and five o'clock P. M. of such day, at the dwelling-house of such debtor, or on the premises where found and seized, or at one of the most public places in the township where found and seized, and and shall be as publicly made as the case will permit. And where bail is entered for the stay of execution as above provided, the first process shall be an execution against the goods and chattels of the judgment debtor, and if such goods and chattels, sufficient to satisfy such execution be not found, and a return be made thereon by the constable to that effect, the justice, unless otherwise directed by the judgment creditor, shall issue a *scire facias* against the bail for the stay of execution, which shall be served and returned by the constable in the same manner as a summons; and upon the return thereof, served, the justice shall, unless good cause to the contrary be shewn, enter judgment; and unless otherwise directed, issue execution against the bail for the amount of such judgment and the costs, or such part thereof as shall remain unsatisfied, to be in substance of the same form, and executed and returned in the same manner as other executions; and on the judgment against the bail, there shall be no stay of execution: *Provided*, That if the constable shall levy on the goods and chattels of the defendant within the thirty days, but not in time to sell the same before the thirty days expire, the return day shall be extended ten days thereafter.

SEC. 46. Where any bail for the stay of execution, under this act, shall become apprehensive that by execution being delayed until the full term of the stay shall have expired, such bail may be compelled to pay the judgment, such bail may go before the justice on whose docket he stands as bail, or the justice having such docket in his possession and the right to issue execution on such judgment, and make and file an affidavit, that he is apprehensive of being compelled to pay such judgment, if execution be further delayed; and thereupon at the request of such bail, such justice shall issue execution against the original judgment debtor, which shall be proceeded with as in other cases: but if with-

in ten days after levying such execution, and the term of stay shall not have expired, such principal debtor shall give other and additional security, to the acceptance of the justice, for the stay of execution for the time not expired, and pay or secure the costs of such execution, the same shall be recalled and stayed, and the subsequent proceedings shall be the same as if no execution had issued, except that in proceeding against the bail, a scire facias shall be issued against the person last entering as security, in the first place, and no scire facias shall be had against the first security.

Execution to be recalled on new bail given.

Costs of execution to be paid or secured.

Sci. fa. vs. last bail.

SEC. 47. After judgment against the bail for stay of execution, the original judgment against the principal shall remain valid and in force, for the use of such bail, who may at any time sue out execution thereon, for his own use, which shall be so endorsed by the justice; such bail shall also be entitled to a transcript of such original judgment, for his own use, which shall have the same force and effect as transcripts in other cases.

Bail entitled to execution and transcript vs. principal.

SEC. 48. In all cases where execution shall issue, on any judgment, against any judgment debtor, and goods and chattels cannot be found to discharge the same, in case it shall be made known to the justice who issued such execution, that such debtor has lands or tenements, the justice shall, on application of the judgment creditor, forward a certified transcript of the judgment and proceedings to the clerk of the circuit court, who shall file said transcript, and issue a scire facias against such debtor, to appear at the next term of such court, and shew cause why execution should not issue; and if such defendant neglect to attend, or do not shew cause to the satisfaction of the court why execution should not issue, the court shall direct execution against the goods and chattels, lands and tenements of such debtor, in the same manner as though judgment was obtained in said court. The provisions of this section shall extend to the lands and tenements of decedents' estates, on judgments rendered against them in their lifetime, and the scire facias shall be served on their executors, administrators or heirs, and also on the terre tenants, if any. Two returns of *nil*, or *not found*, on a scire facias, shall be deemed equivalent to a service thereof. Writs of scire facias may be served and returned as summonses.

When, and how, for want of personal property, execution may go vs. real estate.

J. P. to forward transcript to clerk of C. C. who shall file it, and issue sci. fa. &c.

C. Court shall direct execution vs. goods, chattels, lands & tenements.

Remedy vs. real estate of decedents.

Sci. fa. vs. executors, administrators, heirs, or terre tenants.

SEC. 49. In all cases where the plaintiff shall not reside in the county where suit is brought, or to be brought, the justice may, before issuing process or entering the case, or [at] any time before trial, with or without motion, require and cause such plaintiff to give sufficient security, resident in the proper county, for the payment of all costs caused or to be caused by such plaintiff, in such case before the jus-

Plaintiff not residing in county may be ruled to surety for costs.

Surety may be by bond, or entry on docket.

When J. P. may appoint constable.

Oath, authority and duty.

J. P. appointing constable to stand as surety.

J.P. to receive and pay over money.

Remedy vs. J. P. for neglect or refusal to pay over.

Judgment vs. J. P.

tice, which security may be by bond, or by entry on the justice's docket signed by the surety, who shall thereafter be liable for all costs caused or to be caused by such plaintiff in such case, before the justice.

SEC. 50. In all cases where it shall be necessary to have process served, in either civil or criminal cases, and the constable or constables of the proper township shall be absent, or unable from sickness to attend to their official duties, or there be no constable in such township, legally authorized to act in such case or cases, it shall be lawful for any justice of such township, to appoint a person willing to serve as [constable,] until the return or removal of the disability of such absent or other constable or constables, or until one shall be legally appointed; and the person so appointed by the justice, after taking the oath required of other constables, shall have the same authority and duties, and be subject to the same penalties and liabilities, and entitled to the same fees and pay as other constables; and such justice shall stand as security, and be also in that character, civilly liable for any neglect of duty or any illegal proceedings, on the part of such constable so by him appointed:

SEC. 51. It is hereby made the duty of justices to receive from constables all monies by them collected, on process issued by the justices respectively; also all monies the collection of which may have been entrusted to them or which may be offered them on any judgment, account or demand on their dockets or in their possession; and to pay over all monies so collected or received by them, in their official capacity, to the person or persons entitled thereto or duly authorized to receive the same. And if any justice shall neglect or refuse to pay over any money, by him collected or received in his official capacity aforesaid, when thereto requested or demanded by the person or persons entitled thereto, or duly authorized to receive the same, at the office or residence of such justice, he being present, it shall be lawful for such person to complain to some other justice of the township in which the delinquent justice resides, if any there be capable of acting in such case, and if no justice resides in such township capable of acting in such case, then to some justice of an adjoining township in the same county, whose duty it shall be forthwith to issue a summons to some constable of his township, commanding him to summon such delinquent justice forthwith to appear before him, and shew cause, if any there be, why judgment should not be entered against him, for the amount of money so by him collected and not paid over; and if such delinquent justice shall not shew good cause, the other justice shall render judgment against him, for the amount of money so by him collected and not paid over, together with ten per

centum thereon in damages; and in such case there shall be no stay of execution.

No stay.

SEC. 52. No stay of execution shall be allowed on judgments against any justice, for any money collected or received by him, by virtue of his office or trust, or on bonds for the delivery of property under execution; or against bail for stay of execution, on his undertaking as such bail.

No stay, on certain judgments.

SEC. 53. In all cases where the constable shall make it appear to the satisfaction of the justice, that he has been deprived of an opportunity of levying any execution directed to him, within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and make a return to that effect, to the justice who issued the same, such justice is hereby authorized and required, if requested, to issue another execution, for the balance or the whole of the execution remaining unsatisfied, which shall be served and returned in all respects as other executions: and justices may issue writs of *venditioni exponas* to sell property seized on a *fiery facias*, and remaining unsold for want of bidders; also, *alias* executions, whenever the nature and justice of the case may require.

Alias executions may issue in certain cases.

Constable to make certain return, &c.

Venditioni exponas and alias executions.

SEC. 54. When any person shall be duly subpœnaed to attend and give testimony in any suit, civil or criminal, before a justice, and shall fail to attend at the time and place specified in the subpœna, and when no reasonable excuse is given for his or her non-attendance, every such person shall forfeit and pay a fine not exceeding three dollars, at the discretion of the justice, and moreover be liable to the party injured for such damages as such party shall sustain for the want of such witness, to be recovered before any justice or court having cognizance thereof; and every justice before whom any cause is pending or may be decided, shall issue an attachment for every person or witness so failing to attend, on application of the party who may be injured thereby.

Penalty on witnesses disobeying subp.

Fine, not exceeding \$3.

Damages, to party injured.

J.P. may issue attachment, vs. witness.

SEC. 55. If any party shall order a subpœna for more than two witnesses to prove any one fact, the party so ordering such subpœna shall pay the expense or cost of such supernumerary witness or witnesses; and if any witness shall be subpœnaed and not examined by either party, the expense and cost of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter, or otherwise prevent or render unnecessary the examination of such witness.

Party subp'g more than two witnesses to pay expenses thereof.

SEC. 56. When any live stock shall be taken in execution, it shall be the duty of the justice who issued the execution, to make such allowance to the constable for keeping the same as he may think reasonable, not exceeding twen-

Allowance for keeping live stock taken in execution.

ty-five cents per day for a horse, and in the like proportion for other animals.

- Trial by jury.** SEC. 57. In all civil cases to be tried before a justice, at the request of either party, the justice shall direct the constable to summon and cause to appear before him, twelve lawful citizens of his county, neither of whom shall be related to either party, or interested in the suit, who shall be empannelled as a jury to try such cause; but before they proceed therein, such justice shall administer to them the following oath or affirmation: "You and each of you do solemnly swear (or affirm, as the case may be,) that you will well and truly try the cause submitted to you by A. B. plaintiff, and C. D. defendant, and a true verdict give, according to evidence to the best of your judgment and ability: *So help you God.*" Omitting, in case of affirmation, the words "So help you God," and substituting therefor the words "Under the pains and penalties of perjury." And it shall be the duty of the justice (unless a new trial be granted, as in this act provided) to enter judgment on the verdict of such jury, for the party in whose favor it may be given, and proceed by execution or otherwise, as in other cases.
- Venire.** And whenever in any case such jury shall be demanded by the plaintiff, and shall render a verdict, and not find at least twenty dollars for such plaintiff, such plaintiff shall pay the fees of such jury and all additional costs occasioned by such jury trial. In all other cases, the costs of the jury shall abide the event of the suit.
- Oath of jury.** SEC. 58. If any juror or arbitrator, when duly summoned, shall neglect or refuse to appear before any justice, at the proper time and place, such juror or arbitrator shall be fined by the justice, fifty cents for every such offence, unless such juror or arbitrator shall have a reasonable excuse for such neglect or refusal.
- Judgment on verdict.** SEC. 59. In all cases where any witness or other person shall be guilty of a contempt before any justice, whilst sitting or acting in his official capacity as such, in the trial or hearing of any cause, such justice shall have the power to inflict a fine therefor upon such witness or other person, not exceeding three dollars for each contempt, to which may be added in each case imprisonment not exceeding three hours.
- When plaintiff shall pay jury fees.** SEC. 60. When any action upon any contract, express or implied, is pending before a justice, it shall be lawful for the defendant to plead, as set-off, any judgment rendered in his favour, by any justice in this state, against the plaintiff, then due and unsatisfied; and upon the trial, such judgment may be proved by a transcript thereof, duly certified under hand and seal, by the proper justice; and if the amount of the judgment so pleaded in set-off, shall exceed
- Fine, on juror or arbitrator for non-attendance.**
- Contempts, fine for, and imprisonment.**
- Judgment by J. P. may be set off.**
- Judgment may be proved by transcript.**

the amount of the debt or demand claimed by the plaintiff, the justice shall give judgment for the defendant for the balance due him; and whenever any judgment shall be in set-off as above, it shall be the duty of the justice before whom such set-off is pleaded, to give the plaintiff a certificate thereof, under hand and seal, which when filed with the proper justice, shall stay all further proceedings on the judgment so pleaded in set-off. And should any justice give a false, partial or imperfect transcript, the same purporting to be true and perfect, whereby imposition or fraud is practised or attempted, such justice and the person using such partial, false or imperfect transcript, knowing it to be such, shall be severally fined, upon presentment or indictment, in the proper circuit, in any sum not exceeding double the amount of the sum so set off, or attempted to be set off.

Judgment for defendant for balance. Proceedings when judgment of J. P. is pleaded as set-off.

Penalty for giving or using false or partial transcript.

SEC. 61. Justices shall have power to hear and determine any application to enter satisfaction of judgments on their dockets, whenever the debtor alleges payment or satisfaction, the creditor, his agent or attorney first having due notice thereof, and if in any case, on such motion being made, it be necessary to suspend or recall any execution before the final hearing of such application, the justice shall have power to do so, on the creditor being made safe in his demand, by bond and security, to pay the amount due, in the event of such motion failing.

Satisfaction of judgment, how obtained.

SEC. 62. Whenever any justice shall remove out of the township, county seat, or incorporated town wherein he was elected, his office shall by such removal be vacated, and his authority by virtue thereof shall cease.

Removal of J. P. shall vacate his office.

SEC. 63. Whenever the office of any justice shall become vacant, all the dockets, papers and public laws or statutes, pertaining to his office, shall, if a successor be chosen and qualified at the time, be delivered over to him, but if no successor be [so] chosen and qualified, then to the nearest justice in the township, if any there be, but if there be none, then to the nearest in the county, to be kept by him until a successor shall be chosen and qualified, and then delivered over to him, on request; and if any justice shall absent himself from his township, county seat or incorporated town, for thirty days together, he shall deposit the dockets, papers, and public laws or statutes of his office, with the nearest justice as aforesaid, to be kept and acted on by him, in the cases and manner hereinafter provided, until such absent justice shall return, or a successor be chosen and qualified, and then delivered to such justice or successor; and in case of a vacancy or absence, it shall be the duty of any person into whose possession any such laws, statutes, dockets or papers may come, to deliver them, on demand, to

Office becoming vacant, dockets, &c. to be delivered to successor.

J. P. absenting himself 30 days, shall deposit docket, &c.

Any person holding dockets, &c. to deliver over, &c.

Penalty for neglect to deposit docket, &c.	the proper justice; and each justice so receiving, by succession or on deposit, any such laws, statutes, dockets or papers, shall, if requested, give a receipt therefor, to the person from whom he receives the same: and if any person shall neglect or refuse to comply with either of the above provisions of this section, he shall, on conviction thereof, by presentment or indictment in the proper circuit court, be fined in any sum not exceeding five hundred dollars, exclusive of the costs of prosecution; and shall moreover be civilly responsible for damages, to any person injured by [any]
Proviso.	such neglect or refusal: <i>Provided</i> , That nothing in this section shall be so construed, as to require a justice of the peace, who makes a temporary deposit of his docket, to accompany the same with any other papers than those which relate to unsettled business thereon.
J. P. with whom docket is deposited, shall transfer judgments, issue executions, &c.	SEC. 64. The justice with whom the docket of another may be deposited, during a vacancy or absence as aforesaid, is hereby authorized, whilst having such docket legally in possession as aforesaid, to transfer to his own docket, any judgment on the docket left with him, that may be due before it shall be delivered up, at the request of the judgment creditor, or any other party interested, and thereupon to issue execution thereon, or to give a transcript thereof, in the same manner as if the judgment and proceedings had been originally had before him, and shall
Note transfer.	note, "Transferred to the docket of A. B., the day of ,," on the docket deposited, whence the transfer is taken. And the successor of any other justice, on obtaining his dockets and papers, shall be authorized to issue executions on his judgments, and give and certify transcripts of his proceedings, in the same manner as if the same had been originally had before him.
Successor of J. P. may issue executions, give transcripts, &c.	SEC. 65. In all cases where a transcript of a judgment of a justice in this state, shall be made out and certified by the justice authorized to certify the same, and delivered to another justice, for the purpose of enforcing execution of such judgment, the justice to whom the transcript is delivered, shall make an entry thereof on his docket, and issue
Proceedings on transcripts of judgments, &c.	a scire facias against the judgment debtor therein, to appear and shew cause, if any exist, why execution should not issue against him for the amount of the judgment and costs, as stated in the transcript; or the justice may issue a
Scire facias.	capias against such debtor, on which the debtor may be held to bail, as in other cases; and if the defendant cannot
Or capias.	prove that he has fully paid and satisfied such judgment, or shew other good cause, execution shall be awarded and issued for the whole amount thereof, or such part as shall
Execution awarded, unless cause shewn.	appear to remain unsatisfied, with interest and costs, as in other cases; but stay of execution, if allowable, shall only
Stay, from date of first judgment.	

be had from the date of the original judgment. And if any bail for stay of execution on any judgment, shall remove from the county where he shall have entered as such bail, to any other county in this state, and a return of a constable be had, on an execution against the principal, of no goods and chattels, or of not goods and chattels sufficient, as herein before provided, the judgment creditor may obtain from the proper justice, a certified transcript of the judgment, recognizance or entry of bail for the stay, and other proceedings in the case; upon which transcript such creditor may proceed, before a justice of the county where the bail may reside, against such bail, by *scire facias* or *capias*, as in the case of other transcripts.

Proceedings
vs. bail for
stay, removing
to another
county.

SEC. 66. If any justice shall refuse or neglect to give to any person entitled thereto, and paying or tendering his fee therefor, a certified transcript of any judgment or other proceedings, rendered or had by or before him, or in his possession for the purpose of being acted on by him; or to perform any other act or duty required of him by this act; and shall not render a reasonable and sufficient excuse for such neglect or refusal; every justice so offending, without such excuse, shall on conviction thereof, on presentment or indictment in the proper circuit court, be fined in any sum not exceeding one hundred dollars, and shall moreover be liable to the suit of the party injured.

Penalty on J.
P. for refusing
transcript, or
other neglect
of duty.

SEC. 67. In serving executions, *subpœnas*, writs of attachment, and process in criminal cases, issued by justices, the power and authority of constables shall be co-extensive with the limits of their respective counties; and such executions, *subpœnas*, writs of attachment, and criminal process, shall extend and be operative throughout the proper county where issued.

Executions
may be served
throughout
the county.

SEC. 68. It shall not be lawful for any justice to purchase, directly or indirectly, [any] judgment, or part thereof, on his docket, or any docket in his possession for the purpose of being acted on by him; nor for any constable, either directly or indirectly, to purchase any judgment or part thereof, on any docket of any justice in his county; and if any justice or constable shall offend against the above provisions of this section, he shall be fined for each offence, upon conviction thereof, by presentment or indictment in the circuit court, in any sum not exceeding one hundred dollars, nor less than five dollars, with costs.

J. P. and constable prohibited from
buying judgments.

SEC. 69. No writ of *capias ad satisfaciendum* shall issue, on the judgment of a justice, in civil cases, until after a return by the constable, on execution, of no goods and chattels, or not goods and chattels sufficient to satisfy the execution, unless the judgment creditor, his agent or attorney shall make and file with the justice in whose office the

Penalty.

Ca. sa. not to
issue, until return
of no
goods, &c. un-
less, &c.

judgment may be, an affidavit, stating that he has reason to believe and does verily believe, that the judgment debtor is about to leave the county, without leaving behind him a sufficiency of property subject to execution, to satisfy such judgment, or that he has reason to believe and does verily believe, that such judgment debtor will or does conceal his property with intent to defraud his creditor or creditors; in which case it shall be lawful for the justice to issue a *capias ad satisfaciendum*, in the first instance, without first issuing a *fieri facias*, or having such return by the constable as aforesaid. And whenever a defendant in a civil case, shall be brought before a justice, and judgment be rendered against him, it shall be the duty of the justice to order such defendant into the custody of the constable, for any time not exceeding twenty four hours, until the judgment creditor, his agent or attorney, shall have an opportunity of making and filing such affidavit, unless such debtor shall give special bail, for the stay of execution, as herein before provided. And before proceeding against any special bail, there shall be a return of not found, by a constable, on a *capias ad satisfaciendum*, against the principal.

Defendant on *capias*, to be detained, not more than 24 hours.

Return not found, before proceeding vs. special bail.
Remedy vs. special bail.

Special bail may surrender principal, and how.

Notice to plaintiff.

Judgment for costs vs. principal.

Certain pleas or statements to be sworn to.

SEC. 70. The remedy against any special bail, taken under authority of this act, may be by *scire facias*, or action of debt on the recognizance of bail, in any court of competent jurisdiction; and such special bail may, on obtaining a bail-piece from the justice, seize and surrender his principal, at any time before suit brought or judgment rendered against him on his recognizance as such bail, to the justice before whom such bail was originally taken, or his successor in office, or any other justice having in his possession the docket containing such original case; of which surrender such bail shall notify the plaintiff, his agent or attorney, if resident in the county; whereupon such bail shall be exonerated from his undertaking; but if suit be brought against him, he shall be liable for costs therein up to the time of such surrender, including the dismissal thereof, and if not then paid, judgment may be rendered against him therefor. And on such surrender being made, such justice shall require such principal so surrendered, either to replevy the judgment, interest and costs, or to stand committed to jail, until he shall have replevied the same, or be otherwise discharged by due course of law; and on failure or refusal to replevy such judgment, such justice shall make out a warrant of commitment accordingly.

SEC. 71. No plea or statement in the nature of a plea, in abatement, other than to the jurisdiction of the justice, or for matter appearing on the face of the plaintiff's statement or proceedings, nor any other plea, replication or statement in the nature of pleading, denying or requiring proof of the

execution or assignment of any bond, bill, note, release or other written instrument, which is the foundation of any suit or defence, and is specially set forth in the pleadings or statements of either party, shall be received by the justice unless supported by oath or affirmation. When any such pleading or statement denies or requires proof of any assignment, the oath or affirmation shall be, that the party has reason to believe, and does believe, that the assignment was not made before suit commenced, or not made at all.

Plea of non-assignment, how sworn to.

SEC. 72. In all cases not otherwise specially provided for by this act, or some other statute of this state, it shall be lawful for any party to any judgment of any justice, to appeal therefrom at any time within thirty days from the rendition thereof, to the circuit court of the county where the same may be rendered; the appellant first filing with the proper justice, a good bond with sufficient surety, to the acceptance of the justice, payable to the appellee, in a sum sufficient to secure the debt or damages, interest and costs that have accrued before the justice and that may accrue in the circuit court, if judgment be there rendered against him, conditioned that the appellant will prosecute his appeal to effect, and pay and satisfy the condemnation money and costs which may be adjudged or awarded against him, on the appeal in such case in the circuit court, if judgment be there given against him; and no appeal shall be dismissed by the circuit court, on account of the informality or insufficiency of such appeal bond, if the appellant will, on or before the calling of the cause, file a good and sufficient bond with security to the acceptance of the court: and when an appeal is taken, it shall be the duty of the justice, if execution shall have issued, to recall the same, and to make out and certify, under his hand and seal, a true and full transcript of the judgment and proceedings before him in such case, and to cause the same, together with the appeal bond and other papers in the case, to be filed with the clerk of the proper circuit court, within twenty days after the filing of the appeal bond with such justice; and such clerk shall file the papers and docket the case immediately after receiving the same; and if the papers be filed with the clerk ten days before the first day of the ensuing term of the court, the cause shall stand for trial at such term, otherwise the cause may be continued as other cases in such court; and from and after the time of taking the appeal, all further proceedings before the justice shall be stayed: *Provided*, All justices of the peace, other than those living within the bounds of any corporation of a county town, shall be allowed six cents per mile for travelling to file appeal papers in the clerk's office of their respective counties, to be collected as their other fees are: *Provided, also*, That in appeals taken from the judgment of any

Appeal.

Appeal bond.

Appeal not to be dismissed for informality, &c. of bond.

Execution if issued, to be recalled. Transcript, &c. how sent up.

Clerk to docket case.

Appeal to be filed 10 days before court, or continued.

Mileage to J. P. for sending appeal up, &c.

Sureties in appeal may

object to a continuance, unless, &c.

Other security may be given by appellant.

Appeals, how tried in C. C.

Costs, how taxed.

Circuit court may authorize appeal, after 30 days, in certain cases.

Attorney at law being justice, prohibited from practising in certain cases.

Appellant failing to prosecute, appellee entitled to judgment, and 10 per cent.

No exeat, when to issue.

justice of the peace, to the circuit court, if the security or securities in the appeal bond, shall become apprehensive that by continuing the case, he or they will have the costs to pay, on application to the circuit court, having first given the appellant or appellants three day's notice, said court shall release such security or securities from any further cost; and such appellant or appellants shall give other security, to the acceptance of the court, and if he or they shall fail to give such security, the case shall not be continued, but be tried at that term, or dismissed at the appellant's costs; in which case the security of such appellant or appellants shall be accountable.

SEC. 73. The circuit court shall hear and determine cases brought before them, by appeal from justices, in a summary way, without a jury, unless when the amount in controversy shall exceed twenty dollars, and either party in such case require a jury, in which case a jury may be called; and the costs taxed by the justice, and set forth in the transcript, shall be taxed with the costs above; and the court shall have a discretionary power to tax the costs of the appeal in such manner as to them shall appear just and reasonable.

SEC. 74. The circuit court of the proper county, may on motion and affidavit of the party, his agent or attorney, authorize the taking of an appeal from the judgment of a justice, after the expiration of thirty days from the rendition of such judgment, if it shall appear from such affidavit, or other evidence, that such party wishing the appeal, was prevented from taking the same within said thirty days, by unavoidable circumstances, or by the improper conduct of the justice rendering the judgment or having the same in possession, and that he has merits in such appeal.

SEC. 75. No attorney at law, holding a commission as a justice, and acting as such, shall be permitted to appear as attorney in the circuit court, in any case appealed from his decision, or in any state prosecution where he shall have recognized or committed the defendant to answer in such case in the circuit court.

SEC. 76. If any appellant shall fail to appear and prosecute his appeal in the circuit court, such court may, on motion of the appellee, affirm the judgment of the justice, in favour of the appellee, with ten per centum thereon and costs, and give judgment therefor; or may, on the like motion of the appellee, proceed to hear and determine the case, as in other cases of appeal.

SEC. 77. Whenever any person is about to remove from this state, without leaving sufficient property for the payment of his debts, which debts shall not be due at the time, or who has made himself liable by contract, the time of per-

formance of which contract has not arrived, and the amount or demand shall be within the jurisdiction of a justice, the creditor or person entitled to coerce the payment of such debt, or performance of such contract, may appear before any justice of the proper county, and make oath to the circumstances in the following form, to wit: "I A. B. do solemnly swear, (or affirm) that C. D. is justly indebted to me, or to E. F. for whom I am agent or attorney (as the case may be) in the sum of \$ or that the said C. D. is holden to me, or to E. F. for whom I am agent; &c. by contract as follows: (here describe the contract, the time for the performance of which contract has not yet arrived;) and that I have reason to believe, and do verily believe, that the said C. D. is about to remove from this state, without leaving sufficient property for the payment or satisfaction of his just debts, (or, without providing for the performance of his said contract;)" which affidavit shall particularly describe the debt or contract of the creditor or other proper person.

Affidavit for
ne exeat.

SEC. 78. On making, subscribing and filing with the justice, an affidavit of the above description, the justice shall issue a writ of *ne exeat*, directed to any constable of the county, commanding him, forthwith to take and bring before the justice issuing such writ, the defendant to shew cause why he should not give special bail for the payment of his said debt, or performance of his said contract.

Writ of ne ex-
eat.

SEC. 79. No writ of *ne exeat* shall issue in any case, until the complainant applying for such writ, shall have filed his bond with security, to the acceptance of the justice, for the payment of the costs that may accrue on such writ, and the damages the defendant may be entitled to, in case said complainant may have procured the issuing of said writ without cause.

Complainant
in ne exeat to
give bond.

SEC. 80. Any person conceiving himself aggrieved or damaged by the issuing of any writ of *ne exeat*, shall be allowed to bring suit on such bond; and if on trial, it shall appear that such writ was sued out without just cause, such person shall be entitled to recover such damages as a justice or jury may assess.

Suit on bond.

SEC. 81. Whenever the defendant in any writ of *ne exeat*, shall on being brought before the justice, refuse or fail to give special bail to the satisfaction of the justice, the justice shall order the party so failing or refusing to be committed to the jail of the proper county; and the party so committed, shall at any time after such commitment, on giving notice to the jailer that he is ready to give bail according to the provisions of this act, and actually giving bail, which shall be approved by two justices, to be summoned by such jailer as soon as practicable, and paying or securing the costs of commitment, be discharged from the custody of the jailer.

Defendant
taken on ne
exeat failing
or refusing to
give bail, to be
committed.

How dis-
charged.

Appeal on *ne exeat*.

SEC. 82. If on the trial of said writ before the justice, either party shall conceive himself aggrieved, such party may take an appeal to the circuit court of the proper county, subject to the restrictions and conditions of this act, touching appeals in other cases; and on an appeal, the proceedings and trial in the circuit court shall be the same as if an original writ had issued from that court; but no execution shall issue on any judgment rendered therein until the expiration of the time stated in the original contract for the payment of the debt, or performance of the contract.

Execution in *ne exeat* to be stayed, &c.

Defendant not liable for costs in certain cases.

SEC. 83. No person giving special bail according to this act, shall be liable for any costs that may have accrued by proceedings had on this writ, (except the costs of commitment as aforesaid:) *Provided*, such person or his bail shall pay the debt or perform the contract, by the time specified in the original contract.

Remedy for special bail, &c.

SEC. 84. Any person having become special bail or security for any defendant, in a writ of *ne exeat*, shall be permitted at any time, to secure the principal in the same manner as in other cases; and every person bound as security for the payment of money or property, or fulfilment of any contract not complied with, shall have the same remedy against the principal, by *ne exeat*, as is provided for creditors or parties.

In trials of right of property, jury shall find the value, &c.

SEC. 85. In all cases of the trial of the right of property, the court or jury (as the case may be) shall find the value of the property claimed, for the purpose of ascertaining the jurisdiction of a superior court in deciding such case, whether on appeal or writ of error.

Sureties may object to a stay of execution in favour of principal.

SEC. 86. When judgment shall be entered against several persons, upon an instrument in writing, any of the signers of which shall have executed the same as security for the others, or any of them, and that fact shall be proven to the justice rendering the judgment, no stay of execution shall be had thereon, if said security shall object to such stay, unless the principal defendant shall indemnify the said security to the satisfaction of said justice.

Ca. ad resp. may issue on sabbath.

SEC. 87. A *copias ad respondendum* may be issued on the sabbath day, provided the plaintiff, his agent or attorney, will file an affidavit, stating a good cause of action, and that the defendant is about to remove from or quit the county, and that he verily believes the defendant will be out of the reach of process, if the issuing of the same should be deferred till another day.

Mandamus may issue to compel J. P. to enter judgment.

SEC. 88. And if any justice of the peace shall refuse to enter judgment, when by law he ought to do so, the circuit court is authorized, and it is hereby made its duty, to issue a writ of *mandamus*, to compel said justice to enter such judgment.

FORMS FOR JUSTICES.—No. 1. SUMMONS.

Summons:

Given under my hand and seal, this day of 18 .

J. H. J. P. [SEAL.]

To any constable of _____ township, GREETING:

Capias:

Given under my hand and seal this day of 18 .

J. H., J. P. [SEAL.]

To any constable of, township, GREETING:

Subpoena.

Given under my hand and seal this day of 18 .

J. H. J. P. [SEAL.]

A. B. Plaintiff, }
vs. } In debt.
C. D. Defendant. }

In debt

(After noting the *previous proceedings*, with the *constable's return* and *time of trial*, say)

This day came the parties (by themselves, their agents or attornies, as the case may be,) and the cause and proceedings being fully heard and inspected, and all things touching the same: It is therefore considered, that said *plaintiff* (or *defendant*) recover of said *defendant* (or *plaintiff*) the sum of _____, with interest thereon, at the rate of six per centum per annum, from the _____ day of _____ 18____, till paid, with costs of suit, taxed at _____; and the *defendant* (or *plaintiff*) in mercy, &c.

Other actions.

No. 5.

Non-suit.

Judgments in *assumpsit*, *covenant*, *trespass* or *case*, which all sound in *damages*, may be in the above form, substituting the word *damages* for the word *debt*. If the plaintiff is to be *non-suited* for not appearing, say, "Comes the defendant, but the plaintiff being called, comes not; nor is his suit further prosecuted: It is therefore considered, that the plaintiff be non-suited, and that the defendant go hence without day, and recover of the plaintiff his costs by him about his defence herein expended; and that the plaintiff be amerced, &c.

No. 6.

Judgment vs.
defendant not
appearing.

If the defendant do not appear, and the case proceeds, say, "Comes the plaintiff, but the defendant, though called, comes not; and it appearing that he has been duly served with process, and the cause being fully heard and inspected, &c." as in form No. 4.

Judgment on
trial without
jury.

NO. 7. GENERAL JUDGMENT FOR DEFENDANT ON TRIAL.

Commence as in form No. 4. and on coming to the judgment, say, "It is considered that the plaintiff take nothing by his suit, but be amerced for his false clamour; and that the defendant go hence," &c. as in form No. 5.

NO. 8. JURY TRIAL AND JUDGMENT.

Judgment on
verdict of jury.

After stating the appearance of the *parties*, as in No. 4. or of the *plaintiff*, the non-appearance of the *defendant*, and service of process, as in form No. 6. or the non-appearance of plaintiff, as in form No. 5. say, "and a jury being summoned at the request of the (*plaintiff* or *defendant*, as the case may be,) who being called, likewise come, to wit: (here insert their names,) good and lawful men of _____ county aforesaid, who being duly elected and sworn, well and truly to try the cause submitted to them between the parties aforesaid, and a true verdict to give, according to evidence, to the best of their judgment and ability, returned the following verdict, to wit: "We the jury find for the _____", (as the verdict may be.)

"It is therefore considered, that the _____ (*plaintiff* or *defendant*, as the case may be) recover," &c. as in form No. 4. Or if the case stand on *default*, and the jury are sworn to inquire of damages only, after the word *sworn*, say, "Well

and truly to inquire of, and assess the plaintiff's damages in said cause," &c. in which case their verdict will be—"We the jury assess the plaintiff's damages at . ." If the jury try the cause, on an issue made between the parties, they are to find for the plaintiff or defendant (as the case may be) so much in *debt* or *damages*, as the nature of the *action* or *defence* may require; or to find generally for the defendant.

No. 9. JUDGMENT IN REPLEVIN, FOR PLAINTIFF.

"It is considered that for the tortious taking and unlawful detention, (or [the] unlawful detention, as the case may be,) complained of by the plaintiff, the said plaintiff recover of the defendant the sum of , for his damages, sustained by reason thereof, with costs of suit taxed at ; and the defendant in mercy," &c.

Judgment for plaintiff in replevin.

If the defendant succeed in his defence, before the justice or jury, there will be a general verdict and judgment in his favour, "that the defendant go hence without day, and recover of the plaintiff his costs," &c. as in forms No. 5 and 7.

If the defendant shall have pleaded a plea entitling him to a judgment for a return of the property replevied, to wit, a plea of *property in himself*, or *any person* other than the plaintiff, at the time of suing out the writ of replevin, and such plea be found true, the judgment will read—"It is therefore considered that the defendant have return of the goods and chattels replevied (or such part of them as may be adjudged to him,) to wit: (here describe them,) agreeably to law; and that he recover of the plaintiff his costs," &c. as above.

Judgment for defendant in replevin.

No. 10. FIERI FACIAS.

State of Indiana, county, sct:

Fieri facias.

To any constable of township, GREETING:

Whereas A. B. obtained judgment against C. D. before , a justice of the peace for said township, for , with interest thereon, at the rate of six per centum per annum, from the day of till paid, together with costs of suit, taxed at , on the day of : You are therefore commanded (adding here, in case of an alias fi. fa., "as before commanded" or, in case of a pluries, "as often before commanded") that of the goods and chattels of said C. D. in your county, you cause to be made the said debt (or damages, as the case may be,) interest and costs, and accruing costs, by distress and sale thereof, returning the overplus, if any, to said C. D.: And of this writ make legal service and due return to me at my office in said township, within thirty days from this date.

Given under my hand and seal this day of 18 .

J. H., J. P. [SEAL.]

No. 11. CAPIAS AD SATISFACIENDUM.

Capias ad satisfaciendum.

State of Indiana,

county, *scit*.

To any constable of township, GREETING:

(Recite the *judgment*, as in a *fi. fa.*, No. 10. and say,) you are therefore commanded, that you take the body of said C. D. to satisfy to said A. B. the *debt* (or *damages*), interest and costs, and accruing costs, and commit said C. D. to the common jail of said county, there to be detained until said *debt* (or *damages*), interest and costs be fully paid and satisfied, or he be otherwise duly discharged: And of this writ make legal service and due return.

Given under my hand and seal this day of 18 .

J. H., J. P. [SEAL.]

No. 12. AFFIDAVIT FOR A STATE WARRANT.

Affidavit for state warrant.

State of Indiana,

county, *scit*:

Before me, A. B., a justice of the peace of the county aforesaid, this day personally came C. D., of , who being by me duly sworn, saith, that on the day of , at the county aforesaid, E. F., late of said county, did (*here describe the crime or offence*)—or, *after setting forth the time and place as above, after the word county; say, a certain—(here describe the crime or offence, assault and battery, larceny, or the like)* was perpetrated on the *body* (or *goods*) of G. H., and that he verily believes a certain E. F., late of said county, is guilty of said offence, or that he has been aiding and assisting in the commission thereof; and further saith not,

(signed) C. D.

Subscribed and sworn to, this day of 18 ,
before me, A. B., J. P.

No. 13. STATE WARRANT.

State warrant

State of Indiana,

county, *scit*:

To any constable of said county, GREETING:

Whereas complaint has been made before me, J. H., a justice of the peace of the county aforesaid, on the oath of A. B., that on the day of , at the county aforesaid, E. F. late of said county, did (*here describe the offence, as in the affidavit*;) You are therefore hereby commanded to take E. F., and him forthwith bring before me, or some other justice of said county, to answer to said complaint, (*or if the warrant be issued on view without complaint, say, "for said offence," instead of complaint,*) and be further dealt with according to law.

Given under my hand and seal, this day of 18

J. H., J. P. [SEAL.]

No. 14. SEARCH WARRANT.

Search warrant.

State of Indiana,

county, *scit*:

To any constable of said county, GREETING:

Whereas it appears to me, J. H., a justice of the peace of said county, by the oath of A. B., that the following goods and chattels, to wit, (*here describe them*) have within days last past (or *were, on the* day of ,) by some person or persons unknown, been feloniously stolen, taken and carried away out of the hands and possession (or *from the premises*) of C. D., of the county aforesaid; and A. B. doth, on oath (or *affirmation*) declare that he verily believes that said goods or part thereof are concealed (*in, on, or about the house or premises of E. F.; describing the place to be searched*) in said county:

These are therefore, to command and authorize you, with the necessary and proper assistance, to enter into said (*here describe the house, premises or other place to be searched,*) and there diligently search for said goods and chattels, and if the same, or any part thereof be found, on such search, bring the same, as also the said E. F., forthwith before me or some other justice of said county, to be disposed of and dealt with according to law. And of this writ make due service and return.

Given under my hand and seal, this day of 18 .
J. H., J. P. [SEAL.]

The affidavit for a search warrant may be substantially the same as the introductory or reciting part of the warrant as laid down in the above form, and should always name the suspected person, if the affidavit can safely do so.

No. 15. WARRANT FOR SURETY OF THE PEACE, &c.

State of Indiana, county, set:

To any constable of said county, GREETING:

Whereas A. B. hath this day made oath before me, J. H., a justice of the peace of said county, that he hath been threatened by C. D. of said county, and verily believes that said C. D. will do some bodily injury to himself (or family; or destroy his property, or procure some other person to do so, *as the case may be;*) and that he doth not make complaint through malice, or for mere vexation: Whereupon he hath prayed surety of the peace, &c.

Peace warrant.

You are therefore hereby commanded to apprehend said C. D., and bring him forthwith before me, or some other justice of said county, to find surety for his personal appearance, at the next circuit court to be holden in and for said county, and in the mean time to keep the peace generally, and especially towards said A. B., (and his family, if required.)

Given under my hand and seal, this day of 18 .
J. H., J. P. [SEAL.]

(The above form shews what is necessary in the affidavit.)

give bail, in the sum of _____, for his appearance at the next circuit court of said county, to answer to said charge, or in default thereof, to stand committed, &c. and having failed (or refused) to find or give such bail.)

Therefore, in the name and on behalf of said state, I command you that you receive said E. F. into your custody, in the proper jail of said county, there to remain until delivered from your custody by due course of law.

Given under my hand and seal, this _____ day of _____ 18 ____.

J. H., J. P. [SEAL.]

If the commitment be for further examination, or for trial before the justice, make the necessary alteration; inserting the order of bail, and failure to give it when the commitment is for want thereof.

No. 18. WRIT OF ATTACHMENT.

State of Indiana, _____ county, sct:

Attachment.

To any constable of _____ township, GREETING:

Whereas A. B. hath made oath, that C. D., late of said county, so absconds, (or conceals himself,) that the ordinary process of law cannot be served upon him; and that said C. D. is indebted to said A. B. in the sum of _____ (here describe the debt or demand, as in the affidavit:)

You are therefore hereby commanded to attach the goods, chattels, rights, credits, monies and effects of said C. D. in your county, to be kept and disposed of according to law. (And in case of an affidavit against a garnishee, say, Garnishee, either in the writ of attachment, or a separate summons,)—"and whereas said A. B. hath made oath that E. F. of said county, is indebted to said C. D. (or has property, money, effects or credits of said C. D. in his hands, as the case may be:) You are therefore hereby commanded to summon said E. F. to appear before me, J. H., a justice of said township, at my office therein, on the _____ day of _____, at _____ o'clock _____, then and there to answer, under oath, touching such indebtedness (or the property, money, effects or credits,) of said C. D., within his possession or knowledge: And hereof make legal service and due return to me, at my office aforesaid, within _____ days herefrom.

Given under my hand and seal, this _____ day of _____ 18 ____.

J. H., J. P. [SEAL.]

No. 19. OATH FOR LANDLORD'S WARRANT.

State of Indiana, _____ county, sct:

Oath for landlord's warrant

A. B., being duly sworn, says, that C. D. is justly indebted to him, the said A. B. (or to E. F. for whom said A. B. is agent or attorney) in the sum of _____, being _____ years (or months or weeks) rent of (here describe the premises,) situated in _____ township, in said county, [payable in _____ on _____]

the day of ;] and that said affiant has reason to believe, and does verily believe, there will be danger of losing the said debt, or rent thus due and in arrear, by proceeding to collect the same, in the usual way of collecting ordinary debts: And further saith not. (signed) A. B.

Subscribed and sworn to, before me, a justice of said county, at , this day of 18 .

J. H., J. P.

No. 20. LANDLORD'S WARRANT.

State of Indiana, *county, sct:*

Landlord's
warrant.

To any constable of township, GREETING:

You are hereby commanded to distrain the goods and chattels of C. D. in or upon (*here describe the house or premises,*) situated in the township and county aforesaid, for the sum of , being years (or weeks or months, &c.) rent (or part thereof, as may be) due, and payable in , on the day of , to A. B. for the same, as by affidavit of appears; and proceed thereon, for the recovery of said rent, as the law directs.

Given under my hand and seal, this day of 18 .

J. H., J. P. [SEAL.]

No. 21. WRIT OF REPLEVIN.

State of Indiana, *county, sct:*

Replevin.

To any constable of township, GREETING:

You are hereby commanded, that you take into your custody the following goods and chattels, to wit, (*here describe them, with their value, as in the affidavit*) and them safely keep, until A. B. plaintiff herein, shall satisfy [and secure] you, by sufficient pledges, that he will well and truly prosecute to effect this his writ of replevin against C. D. defendant herein, and return said goods and chattels to said C. D., in case such return be awarded, and pay to said C. D. such damages as may be awarded [him,] if he succeed in his defence herein: And that, on being so satisfied and secured, you deliver said goods and chattels to said A. B., and summon said C. D. to appear before me, J. H. a justice of said township, at my office therein, on the day of , at o'clock , to answer said A. B. of and concerning the tortious taking and unlawful detention (or unlawful detention) of said goods and chattels, to his damage dollars, as is said; and of this writ make due service and return.

Given under my hand and seal, this day of 18 .

J. H., J. P. [SEAL.]

No. 22. JUDGMENT IN STATE CASES.

Judgment in
state case.

After entering the finding of guilty, by the jury or justice, say, "It is therefore considered, that said state of In-

diana recover of said A. B. the sum of _____, fine for the offence aforesaid, with interest thereon till paid, as well as the costs of the prosecution against him, taxed at _____; and that said A. B. stand committed till said fine and costs be paid or replevied, or he be otherwise duly discharged: And the said A. B. in mercy, &c.

No. 23. SCIRE FACIAS, (on Transcript.)

State of Indiana, _____ county, set:

To any constable of _____ township, GREETING:

Whereas on the _____ day of _____, A. B. obtained *Scire facias* on judgment, before C. D. a justice of the township of _____, county of _____, and state aforesaid, for the sum of _____, debt (or damages,) with interest thereon from the day of _____ till paid, and costs of suit, taxed at _____; costs accrued since, _____; whole costs, _____; making in all, the sum of _____; as by transcript thereof, duly certified, appears: And whereas said judgment is still in full force, unreversed and unsatisfied, and execution thereof yet remains to be made, as is on the part of said A. B. alleged:

You are therefore hereby commanded, that you summon said _____, to appear before me, J. H., a justice of said _____ township, at my office therein, at _____ o'clock _____, on the _____ day of _____, to shew cause why execution shall not issue against him, for the debt, interest and costs aforesaid. And of this writ make due service and return.

Given under my hand and seal, this _____ day of _____ 18 ____.

J. H., J. P. [SEAL.]

A *scire facias* against bail for stay of execution, or a justice or constable for not paying over money collected, may be substantially the same as above, making the necessary variation in the recital, and saying "shew cause why said A. B. ought not to have judgment and execution against him, for said sum of _____ (adding, in case of a justice or constable, with ten per centum thereon,) with interest and costs," &c. *Scire facias in other cases.*

No. 24. JUDGMENT ON SCIRE FACIAS.

"Come the parties (or comes the plaintiff, &c. as in the above forms,) and the cause being fully heard and inspected, *Judgment on scire facias.* &c. it is considered that said A. B. have execution (or judgment and execution) against said E. F. for _____, the debt (or damages) aforesaid, with interest thereon from _____ till paid, and _____ the costs aforesaid, making the sum of _____, exclusive of interest, together with his costs by him about his suit herein expended, taxed at _____: And said E. F. in mercy, &c." (Add, in case of a justice or constable, together with ten per centum thereon, &c.)

CHAPTER LV.

An Act declaring what Laws shall be in Force.

[APPROVED, JANUARY 2, 1813.]

The common
law of Eng-
land, &c. in
force.

Be it enacted by the General Assembly of the state of Indiana, That the common law of England, and statutes or acts of the British parliament made in aid of the common law, prior to the fourth year of the reign of King James the first, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter, thirteenth Elizabeth, and ninth chapter, thirty-seventh Henry eighth, and which are of a general nature, not local to that kingdom, and not inconsistent with the laws of this state; and also, the several laws in force in this state shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

CHAPTER LVI.

An Act authorizing the re-printing of sundry Acts, and for other purposes.

[APPROVED, FEBRUARY 10, 1831.]

General acts
ordered to be
re-printed.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the secretary of state is hereby directed to cause to be printed alphabetically, at full length, amongst the general acts of this session of the general assembly, all the following acts and joint resolutions, which are hereby declared to be and continue in force in this state; which said acts and joint resolutions are as follows, to wit:

An act authorizing the action of Disseisin.—Approved, January 26, 1824.

An act authorizing Aliens and Foreigners to hold real estate within the state of Indiana.—Approved, January 14, 1818.

An act authorizing and regulating Arbitrations, except the eighth section, which is hereby repealed.—Approved, January 29, 1818.

An act concerning Corporations.—Approved, January 31, 1824.

An act authorizing the establishment of Fire Companies.—Approved, January 5, 1821.

An act against Forcible Entry and Detainer.—Approved, January 21, 1818.

An act relative to Fugitives from Labour.—Approved, January 22, 1824.

An act of congress relative to Fugitives from Labour.

An act to prevent unlawful Gaming.—Approved, January 2, 1824.

An act authorizing the arresting and securing Fugitives from Justice.—Approved, January 22, 1824.

An act to improve the breed of Horses.—Approved, December 31, 1817.

An act providing for the support of Illegitimate Children.—Approved, January 22, 1818.

An act concerning Insane Persons.—Approved, January 22, 1818.

An act concerning Joint Rights and Obligations.—Approved, December 30, 1817.

An act declaring what Laws shall be in force.—Approved, January 2, 1818.

An act to provide for carrying the Laws into effect in New Counties.—Approved, January 2, 1818.

An act for the Incorporation of Public Libraries.—Approved, December 17, 1816.

An act establishing the office and defining the duties of Notary Public.—Approved, January 26, 1824.

An act for the relief of the heirs of Civil Officers, deceased.—Approved, January 22, 1824.

An act to perpetuate Testimony.—Approved, January 26, 1824.

An act for the safe keeping of Prisoners committed under the authority of the United States, into any of the jails of this state, and for other purposes.—Approved, January 26, 1818.

An act regulating Prisons and Prison Bounds.—Approved, December 22, 1823.

An act defining and regulating Privileges in certain cases.—Approved, December 31, 1817.

An act making Promissory Notes, Bonds and Inland Bills of Exchange, negotiable and assignable.—Approved, January 29, 1818.

An act regulating damages on Protested Bills of Exchange.—Approved, January 11, 1820.

An act for rendering authentic as evidence in the courts of this state, the Public Acts, Records, and Judicial Proceedings of courts of the United States.—Approved, January 10, 1818.

An act providing for a Public Seal and Press.—Approved, December 13, 1816.

An act to establish Seats of Justice in new counties.—Approved, January 14, 1824.

An act concerning Debtors and their Securities.—Approved, January 30, 1824.

An act authorizing the Seizure of Boats and other Vessels for debt.—Approved, January 22, 1824.

An act to provide for the commissioning of Sheriffs and Coroners, and to regulate their duties.—Approved, January 7, 1824.

An act providing for Running and Marking the Line dividing the states of Indiana and Illinois.—Approved, January 8, 1821.

A joint resolution confirming the Line between the states of Indiana and Illinois.—Approved, December 11, 1821.

A joint resolution relative to the Northern Boundary of the state of Indiana.—Approved, January 17, 1828.

An act for recording Town Plats.—Approved, January 21, 1818.

An act concerning Vagrants.—Approved, January 22, 1818.

An act prescribing the mode of changing the Venue.—Approved, January 28, 1824.

An act regulating Weights and Measures.—Approved, January 21, 1818.

An act allowing and regulating the Writ of Ad Quod Damnum.—Approved, December 20, 1823.

An act regulating Medical Societies, except the fourth section, which is hereby repealed.—Approved, January 30, 1830.

An act directing the mode of suing out and prosecuting Writs of Habeas Corpus.—Approved, January 12, 1828.

An act relative to Limited Partnerships.—Approved, January 21, 1828.

An act to provide for the Incorporation of Agricultural Societies.—Approved, January 22, 1829.

An act regulating the Admission and Practice of Attornies and Counsellors at Law.—Approved, January 31, 1824.

An act supplemental to the act, entitled an act regulating the Admission and Practice of Attornies and Counsellors at Law; approved, January 31, 1824.—Approved, December 28, 1827.

An act supplemental to an act to provide for carrying the laws into effect in new counties.—Approved, December 28, 1827.

An act to authorize the Loaning of the Seminary Funds.—Approved, January 24, 1828.

An act supplemental to an act entitled "an act to authorize the Loaning of the Seminary Funds," approved January 24, 1828.—Approved, January 23, 1829.

A joint resolution of the general assembly, authorizing the Treasurer of state to purchase a Book, and make certain Records therein.—Approved, January 24, 1828.

An act making provision for compensation to the Re-

corders of Gibson and Monroe counties.—Approved, January 19, 1829.

An act to provide for the Inspection of Salt, Beef, and Flour.—Approved, January 24, 1829.

An act to render the proceedings upon writs of Mandamus and Informations in the nature of Quo Warranto, more speedy and effectual.—Approved, January 21, 1820.

An act for the encouragement of Religion and Learning.—Approved, December 21, 1818.

An act incorporating a Seminary in the county of Gibson, and for other purposes.—Approved, January 21, 1826.

An act to establish a Board of Trustees for the promotion of Schools and Education in Clark's Grant.—Approved, January 28, 1824.

SEC. 2. That the secretary of state is hereby required to cause to be printed in one volume, all the acts of a general nature, which are hereby ordered to be re-printed, or which are enacted or revised at the present session of the general assembly, in alphabetical order, (except as herein after excepted,) and shall also cause to be re-printed in the same volume in the aforesaid acts, in the forepart of the volume, the following, to-wit: General acts.

Declaration of Independence of the Congress of the 4th July, 1776. Documents.

Constitution of the United States and the amendments thereto.

An act of Virginia authorizing the delegates of said state in Congress, to convey to the United States all the right of said state to the territory northwest of the river Ohio.—Passed, December 20, 1783.

An act of the state of Virginia concerning the Territory ceded by said state to the United States.—Passed, December 30, 1788.

The seventh section of an act of the state of Virginia entitled an act concerning the erection of the District of Kentucky into an Independent State.—Passed, December 18, 1789.

An ordinance of Congress for the Government of the Territory of the United States Northwest of the river Ohio.—Passed, July 13, 1787.

An act of Congress to provide for the Government of the Territory Northwest of the river Ohio.—Approved, August 7, 1789.

An act of Congress forming the Territory of Indiana.—Approved, May 7, 1800.

An act of Congress dividing the Territory of Indiana into two separate Governments.—Approved, February 3, 1809.

An act to enable the people of the Indiana Territory to

form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the Original States.—Approved, April 19, 1816.

An Ordinance of the Convention of Indiana.—Approved, June 29, 1816.

Constitution of the state of Indiana.

The acts of Congress now in force respecting the Naturalization of Foreigners.

Revised code
and No. of co-
pies, &c.

Which said volume when so printed shall be denominated "*Revised Laws of Indiana of 1831*," of which four thousand copies shall be printed, bound in sheep, lettered and distributed and disposed of according to law.

The secretary, auditor and treasurer of state shall as soon as practicable advertise in one or both of the newspapers printed in the town of Indianapolis, that they will continue to receive sealed proposals until the first of April next, for completing the binding and lettering of the copies of the General Acts of this session, in the manner required by this act and the act to provide for the distribution of the Laws and Journals and for other purposes, passed at this session; and shall take bond and good security from the lowest bidder for the same, conditioned and payable as they may think proper: *Provided, however*, The said secretary, auditor and treasurer may, with the consent of John Cain, who has already contracted to bind such acts as require only half binding, so modify his contract for such half binding as to dispense with advertising as in this section required.

Repealing
clause.

Proviso as to
rights and for-
feitures.

SEC. 3. All statutes and parts of statutes and joint resolutions which have not been passed or adopted at the present session of this general assembly, or which have not by this act been ordered or directed to be re-printed at full length as aforesaid, be and the same are hereby repealed: *Provided*, That such repeal shall not affect any act done, right accrued or established, proceeding had, or prosecution commenced, or penalty or forfeiture incurred or crime committed, previous to the taking effect of the several statutes of this session of the general assembly; but every such act, proceeding and right, shall remain as valid, and every such suit or prosecution may lawfully proceed, and every such offence or crime be prosecuted or punished, or penalty demanded or recovered as the case may be, as if all the acts, parts of acts and joint resolutions hereby repealed, had remained in full force: *And provided*, That such repeal shall not require the appointment, re-appointment, election or re-election of any officer, unless such as may become vacant according to the laws under which he was at first appointed or elected, or unless otherwise expressly provided in the laws passed, adopted or ordered to be re-printed at the present session of this general assembly, and then the

Proviso as to
officers already
appointed.

same, unless filled by some of the provisions of the statutes last aforesaid, shall be hereafter filled according to law: *And provided further*, That such of the following enumerated acts and joint resolutions, and such parts thereof, as are now in force and unrepealed, either by the laws of this present or any previous session of this general assembly; and also all acts and parts of acts, as by any other act of the present session are declared to continue and be in force, be and the same are hereby declared to be unrepealed, that is to say:

Proviso as to laws continued in force:

An act for the relief of the administratrix and administrators of Nathaniel Scribner, deceased.—Approved, January 1, 1820.

Special acts continued in force by their titles.

An act authorizing Jane Dubois executrix, and William Jones, and Touissant Dubois, executors of Touissant Dubois, deceased, to sell and convey certain lands.—Approved, December 31, 1818.

An act authorizing David Floyd, assignee of Harvey Heth, deceased, to record the balance of the plat of the town of Corydon.—Approved, December 31, 1818.

An act authorizing the Trustees of the town of Hartford, to dispose of certain property for the benefit of a Public Seminary in said town.—Approved, December 31, 1818.

An act for the relief of Abigail Dickerson, administratrix of Ebenezer Dickerson, deceased.—Approved December 31, 1818.

An act to authorize the sale of a certain tract of land, belonging to the estate of Asaph Chandler.—Approved, January 1, 1819.

An act to revive an act entitled, “an act incorporating the Roman Catholic Church in Vincennes.”—Approved, January 1, 1819.

An act authorizing Thomas Hempstead, guardian of William Henry Vanderburgh, to convey ten acres of land, as guardian, to Francis Vigo.—Approved, January 1, 1819.

An act for the benefit of the heirs of James Marrs, deceased.—Approved, January 11, 1820.

An act for the benefit of the heirs of the late Andrew Fulton, deceased.—Approved, January 7, 1820.

An act for the benefit of certain lessees.—Approved, January 18, 1820.

An act authorizing the guardians of Francis V. M’Kee, and Archibald M’Kee, minor children of the late Doctor Samuel M’Kee, deceased, to sell a certain portion of the estate of said deceased.—Approved, January 20, 1820.

An act to authorize the administrators of Richard M. Heth, deceased, to sell a portion of the estate of the said deceased.—Approved, January 21, 1820.

An act for the benefit of the heirs of the late William Jones, deceased.—Approved, January 22, 1820.

An act for the relief of the administrators of the estate of John M'Mertry and Tubby Bloyd.—Approved, January 8, 1821.

An act for the relief of Thomas M'Cartney, David Harman and Peter Weaver.—Approved, January 8, 1821.

An act for the benefit of the surviving heir of John Smith.—Approved, January 5, 1821.

An act authorizing John M'Donald and William M'Cartney, to erect Mills on Fall Creek at the Falls thereof.—Approved, December 31, 1821.

An act authorizing Rebecca Heth and Fielding M. Bradford, administrators of Harvey Heth, deceased, to sell and convey certain lots, &c.—Approved, December 30, 1816.

An act supplementary to an act, authorizing Rebecca Heth and Fielding M. Bradford, administrators of Harvey Heth, deceased, to sell and convey certain lots, &c.—Approved, December 14, 1821.

An act to authorize Richard M. Heth and Jonathan Wright, guardians of the Infant heirs of Richard M'Mahan, deceased, to lay out certain monies belonging to said heirs, in the purchase of lands.—Approved, December 24, 1816.

An act authorizing William Hurst, guardian of the minor heirs of John Morgan, deceased, to purchase land for said minors.—Approved, January 2, 1817.

An act authorizing Jane Dubois, executrix, and William Jones and Touissant Dubois, executors of Touissant Dubois, deceased, to convey a certain house and lot, or parcel of ground in the Borough of Vincennes, and for other purposes.—Approved, January 28, 1818.

An act authorizing the administrators of the estate of John Francis Hamtramck, deceased, to sell certain lands for the benefit of his creditors, heirs and representatives.—Approved, September 15, 1807.

An act for the relief of the heirs and representatives of Samuel Ewing, deceased.—Approved, December 10, 1810.

An act for the benefit of the heirs of the late John Fencher, deceased.—Approved, January 10, 1823.

An act to authorize David Stewart, administrator, and Lucinda Wyman, administratrix of the estate of George Wyman, deceased, to sell certain real estate.—Approved, January 8, 1823.

An act authorizing the executors of the last will and testament of Andrew Brooks, deceased, to sell and convey certain lands therein named.—Approved, January 8, 1823.

An act to authorize Jesse Upton to build a mill-dam across Anderson's river.—Approved, January 8, 1823.

An act to authorize the Agent of State, to sell two addi-

tional brick yards, at the town of Indianapolis.—Approved, January 11, 1823.

An act to incorporate a Public Seminary at Aurora, in the county of Dearborn.—Approved, January 9, 1823.

An act authorizing the Agent of Indianapolis, to lease a Ferry, and for other purposes.—Approved, January 3, 1822.

An act authorizing John Fishlie, to keep a Ferry below and adjoining the town of Jeffersonville.—Approved, January 2, 1822.

An act for the relief of George White, upon the subject of a ferry.—Not approved.

An act to provide for the sale of the Seminary Township in Gibson county, and for other purposes.—Approved, January 2, 1822.

An act to revive the act, entitled “an act to incorporate the Corydon Seminary.”—Approved, December 27, 1816.

An act authorizing the citizens of towns, to vacate said towns, or any part thereof, and for other purposes.—Approved, January 14, 1820.

An act establishing the permanent seat of justice of the county of Wayne, and for other purposes.—Approved, December 26, 1820.

An act incorporating the Walnut Ridge Library Company in the county of Washington.—Approved, December 24, 1816.

An act concerning the town of Jeffersonville.—Approved, September 14, 1807.

An act to amend an act to regulate the town of Jeffersonville.—Approved, December 31, 1813.

An act to change the plan of the town of Jeffersonville. Approved, January 3, 1817.

An act to revive, and amend an act, entitled, “an act to incorporate the Indiana Church,” approved the 7th December, 1810.—Approved, January 22, 1818.

An act authorizing Morgan Eaton and William Ledgerwood to build a bridge across Bussereau creek.—Approved, January 29, 1818.

An act to authorize the proprietors of land in the Lower and Cathlenettes Prairies in the county of Knox, to enclose the same, and for other purposes.—Approved, January 29, 1818.

An act to regulate the enclosing and cultivating of common fields.—Approved, September 17, 1807.

An act to incorporate the borough of Vincennes.—Approved, September 6, 1814.

An act to amend the act, entitled “an act to incorporate the borough of Vincennes.”—Approved, December 26, 1815.

An act to incorporate an University in the Indiana Territory.—Approved, September 17, 1807.

An act to incorporate the Vincennes Library Company. Approved, September 17, 1807.

An act to revive and amend an act, entitled "an act to incorporate the Vincennes Library Company.—Approved, February 15, 1813.

An act to incorporate the Wabash Baptist Church.—Approved, September 16, 1807.

An act to authorize the Boundary Line of Clark county to be surveyed.—Approved, January 22, 1820.

An act to authorize the proprietors of lands in the Lower prairie, in the county of Knox, to enclose the same, and for other purposes.—Approved, September 17, 1807.

An act supplementary to an act entitled an act to authorize the proprietors of land in the Lower prairie, in the county of Knox, to enclose the same, and for other purposes.—Approved, October 24, 1808.

An act to incorporate the New Hope Baptist Church, on Deer creek, in the county of Dearborn.—Approved, December 7, 1810.

An act supplemental to an act, entitled "an act authorizing the laying off certain state roads in this state, and appropriating \$100,000 of the fund, commonly called the three per cent. fund, for opening the same," approved, December 31, 1821.—Approved, January 11, 1823.

An act to re-locate a part of the state road leading from Mount Prospect on the Ohio river, to Petersburg.—Approved, January 8, 1823.

An act to alter the state road from Winchester to Indianapolis.—Approved, January 10, 1823.

An act to revive and continue in force an act entitled "an act locating certain permanent roads therein named, and for other purposes," approved, January 22, 1820, and the several acts amendatory thereto.—Approved, January 10, 1823.

An act to re-locate so much of the state road, leading from the Ohio line through Brookville to Indianapolis, as lies between that point, to which the said road is opened, and Indianapolis.—Approved, January 10, 1823.

An act to establish a state road from Terre Haute to Fort Wayne.—Approved, January 11, 1823.

An act extending the limits of the corporation of the town of Rising Sun, in the county of Dearborn.—Approved, January 18, 1820.

An act locating certain permanent roads therein named, and for other purposes.—Approved, January 22, 1820.

An act supplemental to an act, locating certain roads therein named, and for other purposes, approved, January 22, 1820.—Approved, January 9, 1821.

An act giving further privileges to the freemen of the

town of Lawrenceburgh in the county of Dearborn.—Approved, December 31, 1822.

An act to amend an act for the incorporation of the town of Lawrenceburgh, Dearborn county, passed 26th December, 1815.—Approved, January 20, 1820.

An act appointing commissioners to select and locate a site for the permanent seat of government of Indiana.—Approved, January 11, 1820.

An act appointing commissioners to lay off a town on the site selected for the permanent seat of government.—Approved, January 6, 1821.

An act legalizing the acts and proceedings of the commissioners appointed by the last general assembly, to lay off a town on the site selected for the permanent seat of government; and to legalize the report and allowances made and signed by Christopher Harrison, one of the said commissioners.—Approved, November 28, 1821.

An act relating to the navigation of the river Wabash.—Approved, January 2, 1822.

An act authorizing Tabitha Armstrong, administratrix, and Henry Morton, administrator of the estate of John Armstrong, deceased, to sell and convey certain lots, &c.—Approved, January 21, 1818.

An act for the relief of the county agent of Pike county.—Approved, January 2, 1822

An act to continue in force, an act entitled an act supplemental to an act, locating certain roads therein named, and for other purposes, approved, January 9, 1821.—Approved, January 2, 1822.

An act to establish a permanent road from Levenworth to Terre-Haute.—Approved, January 2, 1822.

An act authorizing the laying off certain state roads in this state, and appropriating one hundred thousand dollars of the fund commonly called the three per cent. fund, for opening the said roads.—Approved, December 31, 1821.

An act authorizing the state agent, to rent out the improved lands on the donation at Indianapolis, and for other purposes.—Approved, January 10, 1823.

An act for the relief of such persons as have suffered or may hereafter suffer by the destruction of the records of the county of Knox, which were consumed by fire at Vincennes in the year 1814.—Approved, September 7, 1814.

[An act to revive an act entitled an act for the relief of such persons as have suffered or may hereafter suffer by the destruction of the records of the county of Knox, which was consumed by fire at Vincennes in the year one thousand eight hundred and fourteen, approved, September 7, 1814.—Approved, January 22, 1820.]

An act to incorporate the Jeffersonville Ohio canal company.—Approved, January 28, 1818.

An act to amend an act, entitled “an act to incorporate the Jeffersonville Ohio canal company.”—Approved, December 23, 1819.

An act authorizing the subscription of a certain number of shares, to the capital stock of the Jeffersonville Ohio canal company.—Approved, January 22, 1820.

A joint resolution of the general assembly of the state of Indiana.—Approved, January 11, 1820.

A joint resolution authorizing the governor to draw a part of the three per cent. fund.—Approved, January 22, 1820.

An act for the better regulation of the town of Corydon.—Approved, January 5, 1821.

An act for the apportionment of senators and representatives in the counties therein named.—Approved, January 10, 1823.

An act to authorize Polly Mosely, sole administratrix of the estate of Enos Mosely, deceased, to sell the real estate of said deceased.—Approved, January 9, 1823.

An act authorizing the location of the seat of justice in the county of Putnam.—Approved, January 7, 1823.

An act to revive and continue in force an act, entitled “an act to establish a permanent road from Freedomia or Levenworth, to Terre-Haute, approved, January 2, 1822.”—Approved, January 11, 1823.

An act to authorize the governor to rent such buildings in the town of Corydon, as may be necessary for his accommodation.—Approved, January 11, 1823.

An act to render the proceedings upon writs of mandamus and informations in the nature of Quo Warranto more speedy and effectual.—Approved, January 21, 1820.

An act supplementary to an act, entitled, “an act to authorize the proprietors of land in the Lower Prairie, in the county of Knox, to enclose the same, and for other purposes.—Approved, October 24, 1808.

An act to amend an act, entitled “an act to authorize the proprietors of lands in the Lower Prairie, to enclose the same, and the act supplementary thereto.—Approved, December 7, 1810.

An act supplementary to the act, entitled “an act for authorizing the proprietors of lands in the Lower Prairie, to enclose the same.—Approved, December 10, 1810.

An act for improving the navigation of White Water.—Approved, February 16, 1813.

An act for the benefit of Edmund Hogan and Thomas Neily.—Approved, December 16, 1813.

An act authorizing John Conner to erect a mill dam a

cross White River at the Horse Shoe Bend.—Approved, December 26, 1822.

An act giving the citizens of Indianapolis, a Public Burying Ground.—Approved, December 31, 1822.

An act to add the lots lately laid out by General William Henry Harrison, to the Borough of Vincennes.—Approved, January 3, 1817.

An act to vacate a part of the town of Lawrenceburgh.—Approved, December 31, 1818.

An act to incorporate Madison Academy.—Approved, January 11, 1820.

An act supplementary to the act, entitled “an act to incorporate Madison Academy,” approved, January 11, 1820.—Approved, January 2, 1821.

An act appointing commissioners to lay out a state road from Lawrenceburgh, through Rising Sun and Vevay, to Madison.—Approved, December 31, 1822.

An act to provide for the altering of State Roads and for other purposes.—Approved, January 9, 1823.

An act changing a part of the State Road, located from Mauk’s Ferry to Indianapolis, and for other purposes.—Approved, January 8, 1823.

An act to establish a State Road from Aurora, in the county of Dearborn to Napoleon, in the county of Ripley, and certain other Roads therein named.—Approved, January 6, 1823.

An act to establish certain State Roads therein named.—Approved, January 10, 1823.

An act to re-locate certain Roads therein named.—Approved, January 11, 1823.

An act to re-locate a part of the State Road from Evansville to Terre Haute.—Approved, January 11, 1823.

An act for the regulation of the town of Centreville.—Approved, December 26, 1815.

An act for the re-location of the seat of Justice of Union county.—Approved, December 21, 1822.

An act to re-locate the seat of Justice of Floyd county.—Approved, January 10, 1823.

An act appointing commissioners to re-locate the seat of Justice of Scott county, and for other purposes.—Approved, January 10, 1823.

An act to authorize the agent of the county of Fayette to sell certain Public Ground in the town of Connersville, in the said county of Fayette.—Approved, December 26, 1822.

An act for the regulation of the town of Salem, in Washington county.—Approved, September 6, 1814.

An act to incorporate the Literary Society of Vevay.—Approved, August 31, 1814.

An act to incorporate the Trustees of the Seminary of Vevay.—Approved, December 26, 1815.

An act to incorporate the Farmers' and Mechanics' Bank of Indiana.—Approved, September 6, 1814.

An act to authorize the Administrators of Simpson Charlton, deceased, to re-assign the certificate of certain real estate, for the benefit of the heirs of said deceased.—Approved, January 9, 1823.

An act for the benefit of the improvers of unsold town lots in the town of Indianapolis.—Approved, January 10, 1823.

An act for the relief of Westill S. Calkins, and for other purposes.—Approved, January 10, 1823.

An act authorizing the guardians of the infant heirs of Henry Hecky, deceased, to lay out certain monies.—Approved, January 3, 1822.

An act to legalize the proceedings of the Franklin and Union Circuit Courts, relative to the partition of certain real estate, among the Heirs of Thomas Harper, deceased.—Approved, January 11, 1823.

An act incorporating New-Albany School.—Approved, January 8, 1821.

An act for incorporating the Indiana Cotton Manufacturing Company.—Approved, January 9, 1821.

An act for the relief of James K. Scott, and others.—Approved, January 5, 1821.

An act to provide for the erection of a House for the employment of the Poor of Knox county.—Approved, January 9, 1821.

An act appointing commissioners to re-locate the seat of Justice of Crawford county, and for other purposes.—Approved, December 24, 1821.

An act to provide for the running the county line between the counties of Clark and Jefferson.—Approved, January 8, 1817.

An act authorizing the Printing and Distributing the Acts, Joint Resolutions and Journals of the present General Assembly, and for other purposes.—Approved, January 28, 1824.

An act making additional appropriations for the Court House at Indianapolis.—Approved, January 2, 1824.

An act to Dissolve the Bands of Matrimony between Willis Kelly and Dardania his Wife.—Approved, December 22, 1823.

An act Divorcing Thomas P. Lewis from his Wife Elizabeth Lewis.—Approved, December 17, 1823.

An act to Dissolve the Bands of Matrimony heretofore entered into, between Green B. League and Nancy League, his Wife.—Approved, December 17, 1823.

An act Divorcing Jane Spencer from her Husband, Moses Spencer.—Approved, January 22, 1824.

An act to legalize the Marriage of William Field to Elizabeth Arbuckle.—Approved, January 7, 1824.

An act for the benefit of Polly Brown and the Infant Heirs of the late Henry Brown, of Lawrence county, deceased.—Approved, January 30, 1824.

An act for the relief of James Garritt.—*Approved, January 7, 1824.*

An act providing for the alteration of a certain State Road.—*Approved, January 30, 1824.*

An act to establish a State Road from Terre Haute to Crawfordsville.—*Approved, January 7, 1824.*

An act to authorize the location of certain State Roads.—*Approved, January 31, 1824.*

An act establishing certain State Roads therein named.—*Approved, January 14, 1824.*

An act authorizing a review of a certain State Road therein named.—*Approved, January 31, 1824.*

An act authorizing a review of the State Road leading from Salem to Bono, and for other purposes.—*Approved, January 14, 1824.*

An act vacating part of the State Road from Bethlehem by the way of New Washington and Lexington, to intersect the State Road from Mauk's Ferry to Indianapolis, and for other purposes.—*Approved, January 26, 1824.*

An act in addition to the act, entitled "an act authorizing the laying off certain State Roads in this State, and appropriating one hundred thousand dollars, of the fund commonly called the three per cent. fund, for opening the said Roads, approved, December 31, 1821."—*Approved, December 22, 1823.*

An act supplementary to an act, entitled an act in addition to the act, entitled "an act authorizing the laying off certain State Roads in this state, and appropriating one hundred thousand dollars of the fund commonly called the three per cent. fund, for opening the said Roads, approved, December 22, 1823."—*Approved, January 30, 1824.*

An act to change part of the State Road from New-Albany to Princeton.—*Approved, December 13, 1823.*

An act establishing a State Road from the French Lick to Hindostan, and for other purposes.—*Approved, January 30, 1824.*

An act for changing certain State Roads therein named, and for other purposes.—*Approved, January 30, 1824.*

An act to enable the commissioners to change a part of the State Road from Mauk's Ferry to Indianapolis, and for other purposes.—*Approved, January 14, 1824.*

An act establishing a State Road from Petersburg to Washington.--*Approved, January 28, 1824.*

An act declaring Blue River a public highway, and for other purposes.--*Approved, January 20, 1824,*

An act for the re-location of the seat of Justice of Greene county.--*Approved, December 17, 1823.*

An act for the re-appointment of Hamilton county Commissioners.--*Approved, December 10, 1823.*

An act appointing commissioners to locate the seat of Justice of Madison county.--*Approved, December 20, 1823.*

An act amendatory to an act, entitled "an act for the formation of a New County out of the county of Delaware, approved, December 31, 1821."--*Approved, January 7, 1824.*

An act to repeal an act, entitled "an act for the altering of the Western Boundary Line of Wayne county, and for other purposes therein named," approved, January 11, 1823.--*Approved January 22, 1824.*

An act to alter the North Boundary Line of Madison county, and for other purposes.--*Approved, January 26, 1824.*

An act supplemental to an act, entitled "an act incorporating the New-Albany School, approved, January 8, 1821."--*Approved, January 14, 1824.*

An act attaching Allen county, to the counties of Randolph and Wayne, for the purposes therein named.--*Approved, January 2, 1824.*

An act to authorize a Special Meeting of the Board of Commissioners for the county of Warrick.--*Approved, December 5, 1823.*

An act attaching part of the counties of Montgomery and Putnam, to the county of Parke.--*Approved, January 2, 1824.*

An act for the relief of Sevier Lewis.--*Approved, January 14, 1824.*

An act confirming the Board of Trustees of the town of Evansville, and for other purposes.--*Approved, January 30, 1824.*

An act for the benefit of John Upp and Ezekiel alias Ezekiel Smith.--*Approved, December 17, 1823.*

An act for the relief of James Leviston, Clerk of Union Circuit Court.--*Approved, December 13, 1823.*

An act for the relief of William Jackson.--*Approved, December 20, 1823.*

An act to confirm the Sales made by the Administrators of Henry Vanderburgh, late of Knox county, deceased.--*Approved, December 10, 1823.*

An act for the relief of the Collector of Clark county.--*Approved, January 30, 1824.*

An act for the benefit of the Widow and three younger Children of the late Henry Vanderburgh, of Knox county, deceased.--*Approved, January 14, 1824.*

An act for the relief of the Sheriff of Spencer county.—*Approved, January 2, 1824.*

An act respecting certain Public Property in the county of Spencer.—*Approved, January 14, 1824.*

An act for the relief of Claudius G. Brown.—*Approved, January 26, 1824.*

An act legalizing the Board of Commissioners of the county of Vigo.—*Approved, January 22, 1824.*

An act to amend an act, entitled "an act to authorize the administrators of Simpson Charlton, deceased, to re-assign the certificate of certain real estate, for the benefit of the heirs of said deceased," approved, January 9, 1823.—*Approved, December 13, 1823.*

An act for the relief of the securities of Samuel Powell, Collector of Taxes for the county of Jackson.—*Approved, January 11, 1824.*

An act for the relief of Elias Willets, late Sheriff of Wayne county.—*Approved, January 14, 1824.*

An act to incorporate the Law Library Society.—*Approved, January 26, 1824.*

An act for the relief of Samuel Little and Thomas Highfill.—*Approved, January 30, 1824.*

An act for the relief of John Spencer, Sheriff of Dearborn county.—*Approved, January 30, 1824.*

An act allowing further compensation to Christopher Harrison, agent of the three per cent. fund.—*Approved, January 30, 1824.*

An act to incorporate the Salem Grammar School.—*Approved, January 2, 1824.*

An act for the benefit of Henry Kimberlin.—*Approved, January 26, 1824.*

An act for the benefit of the estate of John H. Crane, deceased.—*Approved, January 31, 1824.*

An act for the relief of certain Lessees of reserved Lands.—*Approved, January 22, 1824.*

An act making general appropriations for the year one thousand eight hundred and twenty-four.—*Approved, January 31, 1824.*

An act to prevent waste on Lands reserved for the use of Salt Springs, and for other purposes.—*Approved, January 30, 1824.*

An act authorizing a called session of the Circuit Court of Harrison county, for the trial of Robert Morgan.—*Approved, January 14, 1824.*

An act establishing a County Seminary in the county of Knox.—*Approved, January 2, 1824.*

A Joint Resolution of the General Assembly of the State of Indiana, on the subject of the debt due from this State to the United States.—*Approved, January 30, 1824.*

An act for the relief of James Vawter, late Sheriff of Jefferson county.—*Approved, January 20, 1824.*

An act concerning the Seminary Lands in Gibson and Monroe counties.—*Approved, January 31, 1824.*

A Joint Resolution on the subject of outstanding revenues due the State.—*Approved, January 31, 1824.*

An act for the relief of certain Officers therein named.—*Approved, January 26, 1824.*

An act for the relief of Julius Johnson, Sheriff and Collector of Martin county.—*Approved, December 20, 1823.*

An act authorizing a compensation to William Polke, as Commissioner.—*Approved, January 31, 1824.*

An act for the benefit of the infant heirs of the late Jesse Roberts, deceased.—*Approved, January 20, 1824.*

A Joint Resolution on the subject of the Indianapolis Agency.—*Approved, January 31, 1824.*

An act for the benefit of Benjamin Vancleave and the heirs of Hugh Holmes, deceased.—*Approved, January 2, 1824.*

An act making specific appropriations for the year eighteen hundred and twenty-four.—*Approved, January 31, 1824.*

An act to authorize a loan for the use of the State.—*Approved, December 17, 1823.*

An act authorizing the County Commissioners of Switzerland county, to lay a Special Tax therein named.—*Approved, January 22, 1824.*

An act for improving the navigation of the river Wabash.—*Approved, January 31, 1824.*

An act providing for opening a Canal at the Falls of the Ohio.—*Approved, January 31, 1824.*

An act giving further powers to the agent for the State at Indianapolis.—*Approved, January 31, 1824.*

An act authorizing the County Commissioners of Switzerland county, to hold a Special Session for the purposes therein named.—*Approved, January 14, 1824.*

An act to reduce the Salary of the agent of State at Indianapolis.—*Approved, January 22, 1825.*

An act giving further powers to the agent of the State for the town of Indianapolis, and for other purposes.—*Approved, February 12, 1825.*

[An act to authorize the agent of the three per cent. fund to pay over certain monies therein named.—*Approved, February 12, 1825.*]

An act authorizing the Administrators of the estate of John H. Piatt, to sell all the real estate of the deceased, in the State of Indiana.—*Approved, February 11, 1825.*

An act authorizing the Administrator and Administratrix of the estate of Thomas Osborn, deceased, to complete a conveyance to certain Lands therein named.—*Approved, February 7, 1825.*

An act for the relief of Collectors of the State Revenue for the year eighteen hundred and twenty-four.—Approved, January 28, 1825.

An act legalizing the proceedings of the Courts doing County Business in the Counties of Marion, Hamilton and Allen.—Approved, February 7, 1825.

An act legalizing the proceedings of the Board of Commissioners of Vermillion county for the year eighteen hundred and twenty-four.—Approved, February 11, 1825.

An act to provide for the payment of certain claims allowed by the Circuit Court of Sullivan county.—Approved, February 7, 1825.

An act to incorporate the town of Charlestown, in the county of Clark.—Approved, February 12, 1825.

An act to amend the act, entitled “an act to incorporate the town of Madison in the county of Jefferson,” approved, December 22, 1823.—Approved, February 3, 1825.

An act to incorporate the Tanner’s Creek Bridge Company.—Approved, February 7, 1825.

An act to incorporate the several Townships in the county of Dearborn.—Approved, February 7, 1825.

An act authorizing the appointment of Pilots at the falls of the river Ohio, in this State.—Approved, February 7, 1825.

An act for the relief of the Securities of the late Sheriff of Floyd county.—Approved, February 7, 1825.

An act for the relief of certain Persons therein named.—Approved, February 7, 1825.

An act for the relief of the Securities of William H. Moore, late Collector for the county of Clark.—Approved, February 10, 1825.

An act for the relief of John D. Stephenson, Clerk of the Hamilton Circuit Court, and for other purposes.—Approved, February 12, 1825.

An act respecting State Roads.—Approved, February 11, 1825.

An act to provide for the appointment of a separate Commissioner for that part of the State Road leading from Mauk’s Ferry to Indianapolis, which lies between the town of Franklin and Indianapolis.—Approved, February 3, 1825.

[An act legalizing the proceedings of the Commissioners in re-locating certain State Roads.—Approved, February 11, 1825.]

An act appointing Commissioners to locate the Seat of Justice of Madison county.—Approved, February 12, 1825.

An act appointing Commissioners to re-locate the Seat of Justice of Lawrence county.—Approved, February 9, 1825.

An act appointing Commissioners to re-locate the Seat of

Justice of Posey county, and for other purposes.—Approved, February 12, 1825.

An act to amend “an act to establish a Board of Trustees for the promotion of Schools and Education in Clark’s Grant,” approved, January 28, 1824.—Approved, February 7, 1825.

An act to amend “an act concerning the Seminary Lands in Gibson and Monroe counties, and for other purposes.”—Approved, February 10, 1825.

A Joint Resolution of the General Assembly relative to the agent of the three per cent. fund.—Approved, February 3, 1825.

A Joint Resolution of the General Assembly.—Approved, February 12, 1825.

An act to repeal an act, entitled “an act authorizing the Administrators of John H. Piatt, deceased, to sell certain Lands therein mentioned.”—Approved, December 15, 1825.

An act appointing an agent of the three per cent. fund.—Approved, January 20, 1826.

An act to amend an act, entitled “an act relative to County Boundaries,” approved, January 21, 1824.—Approved, January 16, 1826.

An act attaching a part of Pike county to the county of Warrick.—Approved, January 20, 1826.

An act for the formation of a New County out of the counties of Montgomery and Wabash.—Approved, December 30, 1825.

An act for the formation of the county of Tippecanoe.—Approved, January 20, 1826.

An act to authorize the associate judges of the Switzerland Circuit Court, to hold a Special Session.—Approved, January 11, 1826.

An act authorizing the Trustees of the Cambridge Academy, in Dearborn county, to hold real estate, and for other purposes.—Approved, January 13, 1826.

An act reviving and amending the act entitled “an act for the incorporation of the town of Lawrenceburgh, Dearborn county, Indiana territory.”—Approved, December 26, 1815, and legalizing and confirming the proceedings of the said corporation, and extending the right of suffrage and the powers of the citizens within the same.—Approved, January 21, 1826.

An act to incorporate the town of Salem, Washington county.—Approved, January 20, 1826.

An act incorporating the Whitewater Canal Company.—Approved, January 21, 1826.

An act legalizing the marriage of William Wright, of the county of Floyd.—Approved, December 22, 1825.

An act legalizing the acts of Jacob B. Lowe, Clerk of

the Circuit Court of Monroe county.—Approved, January 20, 1826.

An act legalizing the proceedings of the Boards of Justices of Vermillion and Hamilton counties, for the year eighteen hundred and twenty-five.—Approved, December 30, 1825.

An act legalizing the proceedings of the Commissioners of the county of Clay, and for other purposes.—Approved, January 21, 1826.

An act legalizing the proceedings of the Board of Justices of Hendricks county.—Approved, January 20, 1826.

An act to legalize the proceedings of the Trustees of the Bartholomew county Library.—Approved, January 11, 1826.

An act legalizing the proceedings of the School Trustees of Congressional Township No 2, in range 4 east, in Washington county.—Approved, January 21, 1826.

An act legalizing the proceedings of the School Trustees of Congressional Township No. 13, in range No. 13, in Fayette county.—Approved, December 19, 1825.

An act authorizing John W. Cox to erect a mill dam across the west fork of White river.—Approved, January 13, 1826.

An act to change the names of certain persons.—Approved, January 13, 1826.

An act for the relief of the purchasers of lots in the town of Indianapolis.—Approved, January 20, 1826.

An act for the relief of the Collectors of the counties of Shelby, Switzerland, Washington and Jefferson.—Approved, January 20, 1826.

An act for the relief of Alexander Dick.—Approved, December 20, 1825.

An act for the relief of Jonathan Gifford, and others.—Approved, December 31, 1825.

An act for the relief of the Trustees of School Section No. 16, Township 14, in range No. 13 east, in Fayette county.—Approved, January 16, 1826.

An act for the relief of the heirs of Benjamin Warner, deceased, and for other purposes.—Approved, January 15, 1826.

An act to amend the act entitled “an act to establish Seats of Justice in New Counties,” approved, January 14, 1824.—Approved, December 19, 1825.

An act appointing Commissioners to re-locate the Seat of Justice of Madison county.—Approved, January 13, 1826.

An act authorizing the Board of Justices of Gibson county, to vacate certain Streets and parts of Streets in the town of Princeton, and to vacate the town of Highbanks in Pike

county, and Sandersville in Vanderburgh county.—Approved, January 20, 1826.

An act to authorize the several Townships in certain counties herein named, to elect Township Officers, and for other purposes.—Approved, January 19, 1826.

A Joint Resolution of the General Assembly, relative to the agent of the three per cent. fund.—Approved, December 31, 1825.

A Joint Resolution of the General Assembly.—Approved, January 20, 1826.

A Joint Resolution for the benefit of the Securities of Martin H. Tucker, deceased.—Approved, January 20, 1826.

A Joint Resolution of the General Assembly, respecting the Court-House in Marion county.—Approved, January 20, 1826.

A Joint Resolution respecting the agent of the State at Indianapolis.—Approved, January 20, 1826.

An act for raising the Salary of the agent of the State, for the town of Indianapolis.—Approved, January 25, 1827.

An act authorizing the surviving Administratrix of the estate of Harvey Heth, deceased, to sell and convey real estate.—Approved, December 31, 1825.

An act authorizing an additional sale of lots in the town of Indianapolis, and for other purposes.—Approved, January 26, 1827.

An act to authorize the sale of a site for a Steam Mill, at Indianapolis.—Approved, January 26, 1827.

An act making an appropriation to pay the debt due from this State to the United States.—Approved, December 30, 1826.

An act for the organization of Delaware county.—Approved, January 26, 1827.

An act for the formation of a New County out of the county of Wabash.—Approved, January 19, 1827.

An act to extend a certain Law therein named.—Approved, January 25, 1827.

An act to provide for recording Brands, Ear Marks, and for Posting Estrays in the counties therein named, and for other purposes.—Approved, January 24, 1827.

An act to authorize Robert R. Roberts, and others to keep a Public Ferry on the West Fork of White river, in Owen county.—Approved, January 19, 1827.

An act in aid of the corporation of the President and Trustees of the town of Jeffersonville.—Approved, January 26, 1827.

An act legalizing certain Contracts made by the agent of the reserved Township in Monroe county.—Approved, January 11, 1827.

An act legalizing the marriage of Benjamin Patterson and Abigail Hults.—Approved, December 21, 1826.

An act to legalize the proceedings of the Board of Justices of Greene county, at a Special Session held on the thirteenth day of May, 1826.—Approved, January 23, 1827.

An act legalizing the proceedings of the Board of Justices of Franklin county, and for other purposes.—Approved, January 26, 1827.

An act organizing a County Library in the county of Crawford.—Approved, January 22, 1827.

An act to legalize certain Official acts of William W. Kennedy, late recorder of Vermillion county.—Approved, January 4, 1827.

An act authorizing Alexander Craig to erect a Dam across the West Fork of White river, and for other purposes.—Approved, January 22, 1827.

An act authorizing John Hammersly to erect a Wing Dam at the Indian Ford on White river, near Bono, in Lawrence county.—Approved, January 22, 1827.

An act for the relief of John Carter and Joel Dixon.—Approved, January 22, 1827.

An act authorizing Alexander Devin, Robert Milburn and Samuel Hall, to convey a lot therein named.—Approved, January 4, 1827.

An act for the benefit of persons who have or are likely to suffer by the destruction of the Records of Dearborn county, which were consumed by fire in the Court-house at Lawrenceburgh, on the morning of the 6th of March, 1826.—Approved, January 11, 1827.

An act authorizing Henry Thornburgh and Henry Hoover, Administrators of the estate of John Charles, deceased, to convey a certain Water Privilege.—Approved, January 14, 1827.

An act authorizing Daniel Fetter and Louis Shryer to purchase and occupy five acres of Land therein named.—Approved, January 26, 1827.

An act for the sale of the Real Estate of Thomas Bullitt, deceased.—Approved, January 26, 1827.

An act to authorize the Executors of William Ballard, deceased, to convey certain Lands therein named.—Approved, January 26, 1827.

An act to authorize Polly Branham, Administratrix of Lindsfield Branham, to sell and convey certain Lands therein named.—Approved, January 27, 1827.

An act authorizing Samuel S. Graham to convey certain lots in the town of Paris, Jennings county.—Approved, December 30, 1826.

An act to authorize Franklin F. Sawyer to sell and convey certain Real Estate.—Approved, January 26, 1827.

An act for the relief of Persons owning Lots in Springfield, the late Seat of Justice of Posey county.—Approved, December 30, 1826.

An act for the relief of Ansel Richmond, Recorder of Madison county, and Clerk of the Madison Circuit Court.—Approved January 4, 1827.

An act to enable the citizens of Vigo county to appropriate their Road Fund to the removal of Stagnant Waters in said county.—Approved, January 16, 1827.

An act more fully to carry into effect an act to provide for the appointment of a Separate Commissioner, for that part of the State Road leading from Mauk's Ferry to Indianapolis, which lies between the towns of Indianapolis and Franklin.—Approved, January 25, 1827.

An act authorizing Arthur Major to build a Bridge across Big Flat Rock.—Approved, January 26, 1827.

An act for the benefit of Persons Leasing the School Section in Township twenty-one, of range seven west, in the year 1825.—Approved, January 14, 1827.

An act legalizing the proceedings of the School Trustees in Congressional Township No. 9, in range No. 2 west, also Congressional Township No. 12, in range No. 13 east, in Franklin county.—Approved, January 26, 1827.

An act for the re-location of the Seat of Justice of the county of Madison, and for the formation of the county of Hancock.—Approved, January 26, 1827.

An act appointing Commissioners to re-locate the Seat of Justice of Crawford county.—Approved, January 9, 1827.

[An act supplemental to an act, entitled "an act to re-locate the Seat of Justice of Crawford county.—Approved, January 25, 1827.]

An act concerning the Seminary Townships of Land in Gibson and Monroe counties.—Approved, January 25, 1827.

An act to vacate part of Evans' enlargement of the town of Princeton.—Approved, January 26, 1827.

A Joint Resolution respecting Blackford's Reports.—Approved, January 26, 1827.

A Joint Resolution on the subject of the Schools Lands in the State of Indiana.—Approved, January 25, 1827.

An act to establish a canal to connect the Navigable Waters of the Wabash river with the Navigable Waters of the Miami of Lake Erie.—Approved, January 5, 1828.

An act to provide for the re-location of the Seat of Justice of Martin county, and extending the boundaries thereof.—Approved, January 24, 1828.

An act to Divorce Elizabeth and Reuben Stout.—Approved, January 24, 1828.

An act to Divorce Sarah Pattengill from her Husband, James Pattengill.—Approved, January 16, 1828.

An act to Divorce Nancy Maddox from her Husband, David Maddox.—Approved, January 21, 1828.

An act to extend an act, entitled an act, to provide for recording Brands, Ear Marks and for Posting Estrays in the counties therein named, and for other purposes, approved, January 24, 1827.—Approved, January 14, 1828.

An act to Divorce certain persons therein named.—Approved, January 24, 1828.

An act to incorporate the town of Corydon in the county of Harrison.—Approved, January 12, 1828.

An act to Dissolve the Banns of Matrimony between John C. Brown and Polly Brown his Wife.—Approved, January 17, 1828.

An act to incorporate the “Franklin Cotton Manufacturing Company,” and the “White Water Cotton Manufacturing Company.”—Approved, January 24, 1828.

An act to incorporate the Indianapolis Steam Mill Company.—Approved, January 17, 1828.

An act to incorporate the Montezuma agricultural and Domestic Manufacturing Association.—Approved, January 19, 1828.

An act to amend the act entitled an act to incorporate the town of Charlestown, in the county of Clark.—Approved, January 17, 1828.

An act to incorporate the Indianapolis and White Water Turnpike Company.—Approved, January 24, 1828.

An act legalizing the proceedings of the Board of County Commissioners of Shelby County.—Approved, January 21, 1828.

An act relative to the Knox county Poor-house.—Approved, January 5, 1828.

An act for the relief of Joseph Campbell.—Approved, January 21, 1828.

An act for the relief of Thomas Wyatt.—Approved, December 24, 1827.

An act for the benefit of Henry Markle.—Approved, January 17, 1828.

An act for the relief of purchasers of lots in the town of Indianapolis, which have become forfeited to the State.—Approved, January 21, 1828.

An act for the benefit of the Devises of Thomas Watts, deceased.—Approved, January 11, 1828.

An act to revive an act, entitled an act, for the relief of such persons as have suffered, or may hereafter suffer by the destruction of the records of the county of Knox, which were consumed by fire at Vincennes, in the year 1814: passed, 7th September, 1814.—Approved, January 11, 1828.

An act to amend an act, entitled an act, for the benefit of persons who have, or are likely to suffer, by the destruc-

tion of the records of Dearborn county, which were consumed by fire, in the Court-house at Lawrenceburgh, on the morning of the sixth of March, 1826: approved, January 11, 1827.—Approved, January 7, 1828.

An act to provide for surveying and marking a road from Lake Michigan to Indianapolis.—Approved, January 24, 1828.

An act to establish a Levee, to preserve the road leading from Vincennes through the Lower Prairie near to the Wabash river.—Approved, January 5, 1828.

An act supplemental to the act entitled an act to establish a Board of Trustees for the promotion of Schools and Education in Clark's Grant.—Approved, January 19, 1828.

An act to enable the Inhabitants of the Congressional townships, in the several counties in this State, to express their assent, or dissent, to the sale of the sixteenth section, in their respective townships.—Approved, January 24, 1828.

An act to authorize the Leasing a part of section sixteen, in township numbered fifteen, north of range numbered seven east, in the county of Hancock, and for other purposes.—Approved, January 24, 1828.

An act making further provision for the sale of the Seminary townships of land in the counties of Gibson and Monroe, and for other purposes.—Approved, January 16, 1828.

An act vacating the town of Greenfield, in the county of Vigo.—Approved, January 23, 1828.

An act to authorize the Board of Justices of Wayne county to sell a part of the Public Square in the town of Centreville.—Approved, January 11, 1828.

A Joint Resolution requiring certain duties to be performed by the agent of State, for the town of Indianapolis.—Approved, January 24, 1828.

A Joint Resolution respecting certain lots in the town of Indianapolis.—Approved, January 24, 1828.

A Joint Resolution and Communication of the General Assembly of the state of Indiana, to the General Assembly of the state of Ohio, on the subject of connecting the Waters of the Wabash river, with those of Lake Erie.—Approved, January 24, 1828.

An act concerning the Wabash and Miami Canal.—Approved, January 23, 1829.

An act authorizing the Board of Justices doing County Business in the county of Lawrence, to assess a Poll Tax for county purposes.—Approved, January 23, 1829.

An act to authorize Samuel Conner to build a Ware House on part of Water Street in the town of Rome.—Approved, December 13, 1828.

An act to authorize the Board of Justices of Bartholomew

county to levy an additional Tax.—Approved, January 6, 1829.

An act legalizing the proceedings of the Board of Commissioners for the county of Vigo.—Approved, December 23, 1828.

An act to authorize the Board of Justices of Scott county, to sell a part of the Public Square in the town of Lexington, and for other purposes.—Approved, January 22, 1829.

An act concerning the town of Fort Wayne.—Approved, January 3, 1829.

An act to authorize William Richards, Administrator of the estate of Gabriel Richards, deceased, to act as guardian of the minor heirs of said Gabriel Richards, deceased.—Approved, December 19, 1828.

An act to incorporate the town of Washington, in the county of Daviess.—Approved, January 19, 1829.

An act to change the name of John Smith to John Lucius Smith.—Approved, January 19, 1829.

An act to revive the act, entitled “an act to amend the act entitled, an act for the benefit of those persons, who have, or are likely to suffer by the destruction of the records of Dearborn county, which were consumed by fire in the Court House at Lawrenceburgh, on the morning of the sixth of March 1826,” approved, January 11, 1827.—Approved, December 18, 1828.

An act for the relief of George Henry, James Borland and Ellis Stone.—Approved, December 18, 1828.

An act to establish a College in the state of Indiana.—Approved, January 24, 1828.

A Joint Resolution concerning the Indiana College.—Approved, January 25, 1830.

A Joint Resolution relative to the Indiana College.—Approved, January 28, 1830.

An act for the benefit of Samuel M’George.—Approved, January 3, 1829.

An act for the relief of the infant heirs of Westley Harrison, deceased.—Approved, December 18, 1828.

An act for the relief of the Securities of Samuel Stanley, deceased, Collector of the county of Jackson.—Approved, January 23, 1829.

An act for the relief of the purchasers of out lots, adjoining the town of Indianapolis, under the acts approved January 31, 1826, and February 12, 1825.—Approved, January 22, 1829.

An act concerning the town of Utica.—Approved, January 19, 1829.

An act supplementary to an act, entitled, “an act to establish a Levee, to preserve the road leading from Vincennes,

through the Lower Prairie, near to the Wabash river," approved, January 5, 1828.—Approved, January 13, 1829.

An act to establish a Clay Turnpike Road from the town of Levenworth in Crawford county, twenty miles or more in the direction of Indianapolis.—Approved, January 13, 1829.

An act to incorporate Hanover Academy.—Approved, January 6, 1829.

An act authorizing the Trustees of the first Presbyterian Church in the town of New Albany, to sell and convey the real estate of said Church.—Approved, January 19, 1829.

An act supplemental to an act entitled "an act appointing commissioners to re-locate the Seat of Justice of Lawrence county," approved February 9, 1825.—Approved, December 26, 1828.

An act appointing Commissioners to re-locate the Seat of Justice of Dubois county.—Approved, January 19, 1829.

An act authorizing further sales, of the Reserved Townships of Land in Gibson and Monroe counties.—Approved, January 23, 1829.

An act to incorporate the Eel river Seminary Society.—Approved, January 1, 1829.

An act to provide for the re-location of the Seat of Justice of Warren county.—Approved, January 22, 1829.

An act to authorize William Youse, to build a Toll Bridge across the East Fork of White Water river.—Approved, January 13, 1829.

An act to vacate the town of Owenville.—Approved, January 3, 1829.

A Joint Resolution appointing a Commissioner, to adjust the terms upon which the Lands granted to this State, by the act of Congress of the 2d March, 1827, shall be conveyed to the state of Ohio.—Approved, January 5, 1829.

A Joint Resolution relative to a portion of the three per cent. Fund.—Approved, January 24, 1829.

A Joint Resolution relative to the three per cent. Fund.—Approved, January 12, 1829.

A Joint Resolution to increase the Salary of the agent of the three per cent. Fund.—Approved, January 19, 1829.

A Joint Resolution.—Approved, January 22, 1829.

An act authorizing Asylums for the Poor in the counties of Washington and Dearborn.—Approved, January 29, 1830.

An act to amend the act, entitled "an act for the relief of the Poor," approved, January 30, 1824.—Approved, January 25, 1830.

An act concerning the Farmer's and Mechanic's Bank of Indiana.—Approved, December 31, 1829.

An act to authorize the Building of Bridges across Lick

Creek and Salt Creek.—Approved, January 29, 1830.

An act for the appropriation of Money to aid in Building a Bridge over Plumb Creek.—Approved, January 25, 1830.

An act providing means to construct the portion of the Wabash and Erie Canal within the state of Indiana.—Approved, January 28, 1830.

An act legalizing the Proceedings of the Board of Justices of Pike county.—Approved, December 28, 1829.

An act authorizing the Board of Commissioners of Shelby county, to hold Special Sessions.—Approved, January 29, 1830.

An act for the Formation of the counties of St. Joseph and Elkhart.—Approved, January 29, 1830.

An act appointing Commissioners to re-locate the Seat of Justice in Dubois county.—Approved, January 21, 1830.

An act supplemental to an act, entitled "an act to re-locate the Seat of Justice of Dubois county," approved January 21, 1830.—Approved, January 30, 1830.

An act to legalize the Proceedings of the Probate Court of the county of Pike.—Approved, January 29, 1830.

An act for the relief of Martha McBride.—Approved, January 28, 1830.

An act in relation to certain Ferries.—Approved, January 29, 1830.

An act to incorporate the Hamilton, Rossville and Richmond Turnpike Company.—Approved, January 25, 1830.

An act giving further powers to the President and Select Council, of the town of Lawrenceburgh, in the county of Dearborn, Indiana.—Approved, January 29, 1830.

An act to incorporate the White Water and Miami Turnpike Company.—Approved, January 29, 1830.

An act to incorporate a company to make a Turnpike pike Road from New Albany in Floyd county, by Greenville, Paoli, Mount Pleasant and Washington, to Vincennes in Knox county.—Approved, January 29, 1830.

An act to incorporate the town of Jeffersonville, in the county of Clark.—Approved, January 28, 1830.

An act for the relief of Samuel Postlewait of Dubois county.—Approved, January 22, 1830.

An act for the relief of James Ball.—Approved, January 18, 1830.

An act for the relief of Drury Holt and Vincent Cooper.—Approved, January 21, 1830.

An act for the relief of Claudius G. Brown.—Approved, January 14, 1830.

An act to establish a State Road from Lake Michigan, by way of Indianapolis, to some convenient point on the Ohio river.—Approved, January 13, 1830.

An act providing for the opening of a part of the Michigan Road.—Approved, January 29, 1830.

An act for the relief of the Securities of Samuel Postlewait, late Collector of Dubois county.—Approved January, 30, 1830.

An act to amend the act entitled “an act incorporating Congressional Townships and providing for Public Schools therein.”—Approved, January 30, 1830.

An act to legalize the Proceedings of the School Commissioner of Madison county.—Approved, January 29, 1830.

An act legalizing the Proceedings of the Superintendent of a School Section therein named.—Approved, January 29, 1830.

An act for the incorporation of the Eugene Academy.—Approved, December 31, 1829.

An act for the Formation of a New County east of Tippecanoe county.—Approved, January 29, 1830.

An act concerning the Seminary site of Union county.—Approved, January 29, 1830.

An act to incorporate the Greencastle Seminary Society.—Approved, January 18, 1830.

An act to incorporate the Crawfordsville Seminary.—Approved, January 4, 1830.

An act to incorporate the Rising-Sun Seminary Society.—Approved, December 30, 1829.

An act appointing Asher Labertew agent of the reserved Township of Land in Monroe county, and for other purposes.—Approved, January 29, 1830.

An act authorizing the Sale of one of the Reserved Sections of Land in the reserved Township of Land in Monroe county.—Approved, January 29, 1830.

An act to legalize and establish the original Survey in the towns of Lafayette in Tippecanoe county, and Mount Vernon in the county of Posey.—Approved, January 22, 1830.

An act requiring the Commissioners of the reserved Townships of Land in Gibson and Monroe counties to reduce the minimum prices thereof.—Approved, January 18, 1830.

An act to vacate the South end of Second Street, in the town of Washington, Daviess county.—Approved, December 31, 1829.

A Joint Resolution relative to the three per cent. Fund.—Approved, January 9, 1830.

A Joint Resolution relative to the agent of the three per cent. Fund.—Approved, January 25, 1830.

A Joint Resolution ratifying the compact, between the states of Ohio and Indiana, in pursuance of the act of Congress of the 24th of May, 1828.—Approved, January 19, 1830.

A Joint Resolution of the General Assembly concerning the agent of the three per cent. Fund.—Approved, January 29, 1830.

An act for the Formation of a New County, north of Marion and Hendricks counties.—Approved, January 29, 1830.

An act supplemental to an act entitled an act to re-locate the Seat of Justice of Crawford county.—Approved, January 26, 1827.

An act legalizing the Proceedings of the Commissioners in re-locating certain State Roads.—Approved, February 11, 1825.

SEC. 4. All acts and joint resolutions and parts thereof relating to the incorporation or establishing of any academy, seminary, school, society, company or town; the appointment and duties of any agent of the three per cent. fund, and all appropriations or other disposition thereof; general and specific appropriations; the relief of any collector of revenue or other person, or of any body corporate; the legalizing of the proceedings of any court, body corporate, board doing county business, officer or other person; the establishment, location, re-location, opening or vacation of any road; or the appointment of commissioners thereon, or prescribing their powers and duties; the location or re-location of any county seat; the vacation of any town or any part thereof; the granting of divorces and legalizing marriages; the conveyance of real estate; and all other private or local acts, which are not repealed or contravened by any act or joint resolution of this or any previous session of the legislature of this state, or which have not expired by their own nature and operation, are hereby excepted from any repealing clause in this act mentioned.

Salvo to repealing clause

This act to be in force from and after its passage.

CHAPTER LVII.

An Act to provide for carrying the Laws into Effect in New Counties.

[APPROVED, JANUARY 2, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever any act passed at the present or any succeeding session of the general assembly of this state, erecting any new county, shall take effect, it shall be the duty of the governor, or person exercising the power of governor, to issue a writ of election, directed to some person in such new county, whom he shall appoint to act as sheriff until the next general election, and until a sheriff is chosen

The governor shall appoint

a sheriff, whose duty it shall be to hold an election for certain county officers,

and qualified, requiring him to cause an election to be held at such place or places in said county as he may direct, on such day as may be designated in the writ of election, for the purpose of electing two associate judges of the circuit court, one clerk of the circuit court, one recorder and three commissioners of the county.

The sheriff shall appoint officers of election.

When said officers shall make return thereof.

SEC. 2. The person to whom such writ of election is directed, shall have full power, and is hereby required to appoint the necessary officers of such election, which officers so appointed, shall act under the same rules, and be subject to the same penalties as are or may be provided by law for regulating general elections, or the election of such officers in old counties, and shall make return to the person acting as sheriff, the Wednesday following, at such place in the county as he may have directed.

How, when, & where notice of an election is to be given.

SEC. 3. The person to whom the writ of election is directed in a new county, shall give at least ten days notice of the time and place or places where such election is to be held, and also of the place where the return is to be made to him, by setting up written notices thereof in three of the most public places in each election district he may establish in such county; and on the return of the election being made to him, and the votes being compared according to law, he shall give to each of the commissioners a certificate of his election, and the time he is elected to serve, having due regard to the law; and shall also, within ten days thereafter, forward to the office of the secretary of state, a certificate of the persons elected as associate judges, and clerk of the circuit court, and recorder of the county; which persons shall be commissioned and qualified into office in all respects as is provided by the laws and constitution of this state: *Provided however,* The person acting as sheriff shall be fully authorized to administer such oaths as are required by the constitution and laws of this state, certified copies of which he shall file in the office of the clerk of the circuit court, whenever it shall be established.

Certificates of election, to whom given.

Sheriff authorized to administer oaths

Officers to continue in the performance of their duties.

SEC. 4. All officers falling within the bounds of a new county, shall continue to exercise the duties of their several offices until they are succeeded by others legally qualified to take their places.

Civil and fiscal proceedings in no way affected by the erection of a new county.

SEC. 5. No suit or action of any nature whatsoever, commenced in any court of record, or before any justice of the peace, shall in any wise be affected by the laying off of any county; and all taxes that may be due the state or any county in the state, at the time of organizing any new county, shall be collected in the same manner as if such county had not been organized.

SEC. 6. This act to take effect and be in force from and after its passage.

CHAPTER I.VIII.

An Act supplemental to an act to provide for carrying the Laws into effect in New Counties.

[APPROVED, DECEMBER 28, 1827.]

Be it enacted by the General Assembly of the state of Indiana, That in all contests of elections for county and township officers, at their first election in new counties, hereafter to be laid off, it shall be lawful for such contested election to be decided at the nearest county seat to the county where such contested election originated. And the commissioners or persons doing county business in the county where such contest is to be tried, are hereby authorized to hear and determine the same, which shall be governed by the law regulating general elections, except the county commissioners or persons doing county business, when called together to receive testimony of contested elections shall be judges to decide the contested election of such county or township officers aforesaid.

Contested elections for county and township officers to be decided at the nearest county seat.

CHAPTER LIX.

An Act for the Incorporation of County Libraries.

[APPROVED, FEBRUARY 9, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever the citizens of any county, shall be desirous of incorporating a county library, it shall be lawful for the qualified voters of such county, twenty days previous notice having been given, by putting up at least one manuscript advertisement in each township of such county, one of which shall be at the place where courts are usually holden, to assemble themselves at the court-house or place where courts are usually holden, and when so assembled, and having chosen a chairman and secretary, shall proceed to elect seven trustees for the county library of such county, to serve for the term of one year from and after the first Monday of September next ensuing their election, and until their successors shall be elected and qualified; and all elections for trustees shall be annual, on the first Monday of September, as their terms of office may respectively expire.

How incorporated.

Notice, how given.

Trustees, term of service and when elected.

SEC. 2. The trustees elected in manner aforesaid, and their successors in office, shall each receive from the chairman of said election, a certificate certifying that they were duly elected, attested by the secretary of said election: and

Certificate of election.

- Oath, &c. shall before entering upon the duties of their office, each take an oath or affirmation, before some person authorized to administer the same, for the faithful performance of the duties of their office; and it shall be the duty of the person administering the same, to endorse a copy thereof on the back of said certificate.
- President. SEC. 3. The trustees chosen in manner aforesaid, shall appoint one of their number to be president at their meetings, and the president and trustees appointed as aforesaid, are hereby created and declared, a corporation and body politic, with perpetual succession, by the name and style of the president and trustees of the ——— county library, and shall in their corporate capacity, be able and capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court of justice, and to make and use a common seal, and the same to change and alter at pleasure; and when vacancies shall happen by the death, resignation or removal from office of the president, or any of the trustees as aforesaid, the board doing county business shall appoint another person or persons to fill such vacancy or vacancies, until the election of trustees thence next ensuing, and until their successors shall be elected and qualified.
- Trustees, a body corporate. Style and powers.
- Seal.
- Vacancies, how filled.
- Sheriff shall notify election of trustees.
- Elections, how conducted.
- Librarian and other officers.
- By-laws.
- Treasurer's bond.
- County agent shall pay over monies due county library.
- Remedy vs. agent for failure to pay over.
- SEC. 4. And it shall be the duty of the sheriff of such county, at least three weeks before the term of service of the president and trustees shall expire, to give notice that there will be an election held for the purpose of electing seven trustees for the ——— county library, which election shall be held and conducted in all respects, agreeably to the provisions of this act.
- SEC. 5. The president and trustees qualified in manner aforesaid, shall elect by ballot, a librarian and treasurer, and such other subordinate officers as they may think necessary, and may remove any such officer at their pleasure, and shall have power from time to time, and at all times thereafter, to make such by-laws, ordinances and regulations in writing, not inconsistent with the constitution and laws of this state and of the United States, as may be necessary for the government of the institution. The treasurer shall give bond with such security as the president and trustees shall direct.
- SEC. 6. The agent of any county, in which there may be an incorporation as aforesaid, shall on the presentment of an order, signed by the president and attested by the clerk thereof, forthwith pay to the treasurer of the same, all monies in his hands, due said library; and on failure thereof, said treasurer shall proceed against such delinquent agent, by motion in the circuit court, having given ten days previous notice thereof, and the court aforesaid, shall give judg-

ment against said agent and his securities, for such sum as may be found due to said county library, together with interest and costs; and execution without stay thereon shall be awarded.

SEC. 7. In case of the absence of the president at any meeting of the trustees aforesaid, the said trustees shall have power to elect one of their own body to serve as president *pro tempore*, until the president shall attend: provided that not less than a majority of the trustees elected or appointed as aforesaid, shall form a quorum to transact business.

President *pro tem.*

Quorum.

SEC. 8. The president and trustees of the county libraries as aforesaid, are hereby authorized to demand and receive, upon their order, all monies that may be paid into the treasury of their corporation, for the benefit of a county library for such county, and lay out the same in the purchase of books, maps, &c. and such other property, real and personal, as they may think conducive to the advancement and benefit of such corporation: *Provided however*, That the said corporation, shall not in their corporate capacity, at any time hold more than the value of one thousand dollars, in real and personal property, books excepted.

Library funds, how expended.

Proviso, limiting estate to be held by corporation.

SEC. 9. Ten per centum of the nett proceeds received from the sale of all in and out-lots, sold by order of the boards doing county business, as the property of any county, in or adjacent to any town, being a county seat in this state, and ten per cent. on all donations made to procure the location of any county seat, shall be reserved for the use of a public library for such county, to be collected and paid over as provided for in this act; and for the purpose of more effectually securing the ten per centum arising from the sales of town lots, at each county seat, established by the laws of this state, the county agents of such counties severally, shall not be subject to obey any order, made by the different boards doing county business, which would authorize the said agents to receive any thing but specie or its equivalent, for the ten per centum reserved by law on the amount of the sales of lots at such county seats, for the use of county libraries. And in all cases where any county agent may have heretofore, in obedience to the orders of the board doing county business of his proper county, taken and received county orders, in payment of debts due for town lots, in or adjacent to any county seat established as aforesaid, it shall and may be lawful for such agent to apportion the amount of the ten per centum, due such county library, (and received in county orders as aforesaid) on all the debts still due such county, for town lots, according to the sums each individual may be owing; and until such agent may have a reasonable time to collect such sum due, no action shall lie against him, by the board of county trus-

Ten per cent. to be reserved for county library on sales of lots at c'ty. seat.

Per centum payable in specie.

How agent shall collect library fund, where county orders have been received for lots sold, &c.

tees of the county library of his county, for failing to pay such library fund.

How library fund shall be refunded by the county where the agent has not reserved it.

SEC. 10. Should it hereafter happen in the sale of town lots, in any county in this state, where by law a reservation of ten per centum on the amount of sales had been made, for the use of a county library, that the agent of such county has paid over the whole amount, or all that he has received of the purchase money of any lots, into the county treasury of his county, without reserving and deducting the said ten per centum for the use of the county library, such county shall be held responsible to the president and trustees of the county library, for the amount of the ten per centum aforesaid; and it shall be the duty of the board doing county business in said county, on satisfactory proof of the above state of facts, by an order entered on their records, to direct the treasurer of their county, to pay the full amount of the ten per centum so received, to the president and trustees of the county library, out of any monies belonging to said county not otherwise appropriated.

Library books exempt from execution on judgment vs. the county.

SEC. 11. That hereafter no county library, the books of which have been purchased by the funds in this act reserved and set apart for that purpose, shall be liable for the [any] debts of the county, or be subject to seizure by execution or otherwise, in any case whatever.

CHAPTER LX.

An Act for the Incorporation of Public Libraries.

[APPROVED, DECEMBER 17, 1816.]

Public libraries may be established, and how.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That from and after the first day of March next, the inhabitants of any city, town, village or neighbourhood in this state, or any part of them, whenever they have subscribed the sum of one hundred dollars for a public library, may assemble themselves for the purpose of holding an election.

SEC. 2. And if two thirds of the subscribers are present, they may proceed to choose by voice, a chairman, who shall preside at that meeting, and the clerk, who shall keep a record of the same.

Shareholders may choose 7 directors.

SEC. 3. After a chairman and clerk are chosen, the shareholders may proceed to choose by ballot seven directors, and to agree upon a name by which their library shall be known; the directors shall appoint one of their number

to be president at their meetings, who shall have no other than a casting vote.

SEC. 4. A true statement of the proceedings of such meeting, including the amount subscribed, and the number of subscribers present at the meeting, shall be sworn to, or affirmed to before some justice of the peace of the county, by the chairman or the clerk, provided for by the second section of this act; and it shall be the duty of such justice, to certify on such statement, that it was sworn to or affirmed to before him.

Chairman or clerk shall swear to the statement of their proceedings.

SEC. 5. It shall be the duty of the recorder of the county, to record the said statement in his book of record when required.

SEC. 6. After such statement of proceedings is duly recorded according to this act, the president and directors, and their successors forever, shall be a body corporate and politic, to be known by such name as is registered in the recorder's office. They shall be capable in law and equity to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, or person or persons whatsoever, in all manner of suits, actions, complaints, pleas, and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic may or can do: *Provided however*, That nothing in this act contained, shall be so construed as to authorize any library company incorporated in this state, to issue notes or bills of credit, payable to any person or persons on his or their order, or to bearer; nor to deal in any kind of bills of exchange, notes or due bills whatever. Except the first election of directors, the annual election forever thereafter, shall be held on the first Monday in January; but if any annual election should be omitted, the directors shall remain in power until the next annual election, and until successors shall be chosen.

May be incorporated.

Shall not issue notes or bills of credit.

SEC. 7. Such library or libraries shall be governed and regulated by such by-laws as may from time to time be made by the president and directors of the same, not inconsistent with the constitution and laws of this state; who shall have power to alter, amend, abolish, and renew any such by-law or by-laws at pleasure.

May make by-laws.

SEC. 8. The president and directors shall have power to make a common seal, and the same to alter, break, change, or renew at pleasure. They shall have power to levy a tax on the shareholders, provided such tax does not exceed one dollar on each share, in any one year; nothing however, in this act, shall be so construed as to prevent a majority of two thirds of the shareholders, attending at their annual meeting, from increasing such tax to any sum not exceeding

Further power of the president and directors.

five dollars on each share in any one year. They shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

SEC. 9. A majority of the directors shall be necessary to form a quorum. They shall have power to fill vacancies that may happen in their own body, and the director or directors, by them elected, shall serve until the next annual election thereafter, and until others are elected in their stead.

May receive
donations.

SEC. 10. They shall have power to receive by donation, any books, monies, papers, or lands, or any other thing or things: *Provided*, such donation, or the rent or interest thereof, be applied to no other purpose than the true interest of the library on which it was bestowed, according to the true intent and meaning of this act: *Provided however*, That they shall not keep for a longer time than six months after receiving the same, more than the real value of five hundred dollars in land, or any other property, except books and those things appertaining to a library.

Not to affect
county libra-
ries.

SEC. 11. This act shall not in any way or manner be so construed. as to affect any county library provided for in the constitution of this state.

CHAPTER LXI.

An Act to establish a State Library.

[APPROVED, FEBRUARY 10, 1831.]

Books of state
library, for
whose use.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the books now in the office of the secretary of state, together with such as may be added to the collection, shall constitute a state library for the use of the members of the legislature, the secretaries and clerks of each house thereof, the officers of the several branches of the executive department of the state government, the judges of the district and circuit courts of the United States, the United States district attorney, the judges and clerk of the supreme court of this state, the judges of the circuit courts and the judges of the probate courts, adjutant and quarter master general, and all officers of state, whose appointment is vested in the legislature or the governor and senate, when any of them may be at the seat of government.

Board of com-
missioners &
their duties.

SEC. 2. The governor, secretary of state, auditor of public accounts and treasurer of state, shall constitute a board of trustees under whose directions the monies appropriated to the library shall be expended, in making additions to

the said collections of books, and in binding those on hand, or such others as may come to hand, in the discretion of the majority of said board.

SEC. 3. That said trustees are hereby authorized and empowered to procure the laws of the other states of the Union, the laws and ordinances of the several legislatures of the territory of Indiana, and the laws and journals of this state which are now wanting, to make complete sets; and also to have bound all laws, that are now or which may hereafter be in pamphlet form or otherwise, if they in their discretion think it necessary for the preservation of the same.

Board shall
procure laws
of other states
&c.

SEC. 4. It is further made the duty of said trustees to fix the time during which any person authorized may detain a book from said library, and further to make and ordain, from time to time, such rules and by-laws for the government of said library, as will be best calculated to make the same useful to those interested; and a copy of such rules and by-laws shall at all times be set up in a conspicuous place in the library room, for the inspection of every visitor; and all fines and forfeitures accruing under and by virtue of such by-laws, shall be recoverable by action of debt, brought before any justice of the peace, or court having jurisdiction of the amount, in the name of the state of Indiana, for the use of the state library; and on all such trials the librarian shall be a competent witness, and his entries to be made as hereinafter directed, shall be full and complete evidence of the delivery of the book or books, and of the date thereof.

Board shall
make by-laws
&c.

Copy to be
put up in li-
brary room.

Fines, how re-
covered.

SEC. 5. The person acting as secretary of state, shall be librarian, and it shall be his duty to make regular entries in proper books to be kept for that purpose, of all books taken out and returned, and of all penalties and fines assessed or collected under this act, or the by-laws established for the government of the library. He shall also keep a catalogue of the books belonging to the library, in a book kept for that purpose, delivering them to and receiving them from the persons entitled to receive them. He shall also keep an account current with the board of trustees and the state, acting as the agent of the board in all matters, upon their written order, or that of a majority of them, to be filed in his office, reporting annually the disposition of the funds appropriated, and the additions made to the library, and how made. It shall also be his duty to collect all fines and forfeitures accruing to the library, by suit or otherwise.

Librarian and
his duties.

SEC. 6. No person shall receive, or have in possession at one and the same time, more than the complete set of the volumes of any work.

Right to take
out books li-
mited.

SEC. 7. There is hereby appropriated for the increase of the state library, the sum of one hundred dollars annually.

Annual ap-
propriation.

which sum shall be audited and paid in the name of and to the librarian, to be expended under the direction of the board of trustees.

Tanner's
maps, to be
purchased, &c.

SEC. 8. That the secretary of state be and he is hereby authorized to purchase two of Tanner's maps of the United States, of the last edition, which shall by him during the recess of the general assembly, be carefully preserved in the state library, and during the sessions of the legislature, shall be respectively placed in some convenient place, in the senate chamber and hall of representatives, for the use of the members of the two houses.

CHAPTER LXII.

An Act to render the Proceedings upon writs of Mandamus and Informations, in the nature of Quo Warranto, more speedy and effectual.

[APPROVED, JANUARY 21, 1820.]

Return to
writ.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That if any mandamus shall issue out of any circuit court in this state, directed and delivered to any person or persons who by the laws of this state are required to make a return to such writ of mandamus, such person or persons shall make his or their return to the first writ of mandamus.

Return may
be traversed.

SEC. 2. Whenever a writ of mandamus shall issue out of any circuit court within this state, and return shall be made thereunto, it shall and may be lawful to and for the person or persons suing or prosecuting such writ of mandamus, to plead to or traverse all or any of the material facts contained within the said return, to which the person or persons making such return shall reply, take issue or demur; and such further proceedings in such manner shall be had therein for the determination thereof, as might have been had if the person or persons suing such writ had brought his, her or their action for a false return; and if any issue shall be joined on such proceedings, the person or persons suing such writ, shall and may try the same in such place as an action on the case might have been tried, and in case a verdict shall be found for the person or persons suing such writ, or judgment given for him, her or them, upon a demurer, or by *nil dicit*, or for want of a replication or other pleading, he, she or they shall recover his, her or their damages and costs, in such manner, as he, she or they might have done in such action on the case as aforesaid. and such damages and costs shall be levied by execution as in other cases, and a peremp-

Replication
and proceed-
ings.

Issue and trial

Verdict,

Judgment.

Execution.

tory mandamus shall be granted without delay, for him, her or them, for whom judgment shall be given, as if such return had been adjudged insufficient; and in case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, as in other cases: *Provided*, That damages recovered by virtue of this act, shall be a bar to any other action or suit for making such return.

Peremptory
mandamus.

Judgment.

Proviso.

SEC. 3. In case any person or persons shall usurp, intrude into, or unlawfully hold and execute any office within this state, it shall and may be lawful to and for the prosecuting attorney of any circuit court within this state, to exhibit one or more information or informations, in nature of a quo warranto, at the relation of any person desiring to prosecute the same, who shall be mentioned in such information or informations to be the relator, against such person or persons so usurping, intruding into, or unlawfully holding and executing any such office or franchise, and to proceed therein in such manner as is usual in cases of informations in the nature of a quo warranto, and if it shall appear to the said court, that the several rights of divers persons to the same office or franchise may be determined, on one information, it shall and may be lawful for the said court to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons against whom such information or informations in the nature of a quo warranto shall be sued or prosecuted, shall appear and plead at the same time at which the said information or informations shall be filed, unless the said court shall give further time when necessary, to plead, and such person or persons who shall sue or prosecute such information or informations in the nature of a quo warranto, shall proceed thereupon with the most convenient speed that may be.

Penalty for
usurpations
or intrusion
into office.
Prosecuting
attorney may
file information.

Proceedings
thereon.

Several claims
may be tried.

When person
informed a-
gainst to ap-
pear.
Time to plead

SEC. 4. In case any person or persons against whom any information or informations in the nature of a quo warranto, shall in any of the said cases, be exhibited in the said court, shall be found or adjudged guilty of an usurpation or intrusion into, or unlawfully holding and executing any of the said offices or franchises, it shall and may be lawful to and for the said court, as well to give judgment of ouster against such person or persons, of and from any of the said offices or franchises, as to fine such person or persons respectively, for his or their usurping, intruding into, or unlawfully holding and executing any such office or franchise; and also, to give judgment that the relator in such information named, shall recover his or their costs of such prosecution, and if judgment shall be given to the defendant or defendants, in

Person found
guilty to be
removed from
office.

Fine.

Costs.

such information or informations, he or they, for whom such judgment shall be given, shall recover his or their costs therein expended, against such relator or relators.

Time may be
given to plead
&c.

SEC. 5. Convenient time shall be allowed in all cases to make a return, plead, reply, rejoin or demur, as to the said court shall seem just and reasonable, any thing herein contained to the contrary notwithstanding.

CHAPTER LXIII.

An Act to regulate Marriages.

[APPROVED, FEBRUARY 4, 1831.]

Who may
contract mar-
riage:

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That male persons of the age of fourteen years, and female persons of the age of twelve years, may, where they are not prohibited by the laws of God from so doing, be joined in marriage.

Who may so-
lemnize mar-
riage.

SEC. 2. Ministers of the gospel regularly licensed to preach, as long as they continue to be members and preachers of their respective churches, justices of the peace within their respective counties, judges of any of the courts within their respective jurisdictions, and the society of friends, commonly called quakers, in their public meetings, according to the rules of their society, are hereby authorized to join together, as husband and wife, all who may apply to them according to the rules hereinafter prescribed.

License to be
issued by clerk
of C. court.

SEC. 3. Previously to such persons being joined in marriage, they shall produce a license from the clerk of the circuit court of the county where one or both of them shall reside, directed to any person empowered by law to solemnize marriages, authorizing him to join together the persons therein named, as husband and wife: *Provided however*, That the society of friends as aforesaid, are hereby authorized to solemnize marriages in their public meetings, without the production of such license; and every clerk shall keep a record of all marriage licenses issued by him, in a book to be used for that purpose.

Proviso.

Record of li-
cense.

Consent of
parents, &c.
when required

SEC. 4. Male minors under the age of twenty-one years, and female minors under the age of eighteen years, shall not be joined in marriage, without the consent of their parents or guardians, if such parents or guardians live within the state; and if any clerk of the circuit court, shall grant a license to such minor, without the consent of his or her parents or guardians, (if he or she have any such living within this state,) either verbally given, or in writing, attested by a credible witness, who shall make oath before such clerk.

Penalty for is-
suing license
without con-
sent, and how
consent shall
be given.

that he heard such parents or guardians give their consent to such marriage, and saw them subscribe their names to such instrument of writing, purporting to be their written consent, he shall for every such offence be subject to pay to such parents or guardians, the sum of five hundred dollars, to be recovered by action of debt, with costs of suit, before any court having jurisdiction thereof; and any indemnifying bond given to any clerk to keep him secure from damages, for granting a marriage license, shall be null and void.

Indemnifying bond, void.

SEC. 5. If any clerk shall grant a marriage license to any persons, except one of the parties usually reside in his county, he shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, together with costs of suit, to be recovered in any court having jurisdiction thereof, by presentment or indictment.

Penalty for granting license to non-resident.

SEC. 6. Every person who shall solemnize a marriage by virtue of this act, shall within three months thereafter, file a certificate thereof in the clerk's office of the county where such marriage took place, to be recorded by such clerk in a book to be kept for that purpose, which record shall be an evidence of such marriage.

Certificate of marriage to be filed and recorded.

SEC. 7. In all cases where the clerk is unacquainted with the parties, or entertains doubts of their lawful age, or whether either of them resides in the county, the affidavit of any credible person, subscribed and sworn to before such clerk, which oath he is hereby authorized to administer, setting forth that the person making such affidavit is acquainted with the parties, and that one of them does usually reside in the county, and that he does verily believe they are of lawful age, and that he knows of no lawful reason why they should not be married, shall be [a] sufficient acquittal to him for granting such license.

Proof of residence, how made to clerk.

SEC. 8. If any person contrary to the provisions of this act, [shall] knowingly solemnize a marriage, such person shall on conviction thereof, before the proper circuit court, by presentment or indictment, be rendered incapable of solemnizing marriages thereafter, and moreover be liable to pay the costs of suit. And if any person having solemnized a marriage, shall fail or neglect to file a certificate thereof as before directed, he shall be subject to pay five dollars for every month he shall continue to fail or neglect to file such certificate, to be collected by presentment or indictment, before any court having jurisdiction thereof, with costs of suit.

Penalty for solemnizing marriage contrary to law.

Penalty for failing to return certificate of marriage.

SEC. 9. If any person not authorized by the provisions of this act, shall solemnize or attempt to solemnize marriages, he shall on conviction thereof, before the circuit court, be deemed guilty of usurpation, and be punished accordingly.

Unauthorized person, solemnizing marriage, guilty of usurpations.

SEC. 10. All marriages heretofore solemnized by licens-

Marriages
heretofore so-
lemnized, le-
galized.

ed preachers of the gospel, and judges of the circuit court, or by any justice of the peace, out of the township for which he was or may be commissioned, provided they were within the county in which such justice resided at the time of the solemnization thereof, are hereby declared legal to all intents and purposes, and the issue or issues thereof are hereby legitimated, as fully and completely as though the said marriages had been in the first instance legal.

CHAPTER LXIV.

An Act regulating Medical Societies.

[APPROVED, JANUARY 30, 1830.]

Preamble.

WHEREAS, owing to defects in the law regulating the practice of physic in this state, the medical societies which now exist, have never been legally organized, and the provisions of the act are such as do not induce a large portion of qualified men to become members of any medical society, or sufficiently to guard against licensing unqualified men to practise medicine; to remedy which evils,

Former pro-
ceedings le-
galized.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the medical society of the state of Indiana, and the several district medical societies which are now organized in this state, shall each, on causing a record of the name of the society, and of the officers last elected, to be made in the recorder's office of the county where the last election was holden, authenticated by the signature of the president and secretary, be thenceforth considered in law and equity, as legally existing; and all licenses heretofore granted by either of them to practise medicine, shall be considered as legally granted, and former elections of officers, as having been legally made; and the division of the state, by the state medical society into twelve medical districts, as having been legally done; and all the powers and privileges of an act, entitled "an act to incorporate medical societies," &c. approved February 12, 1825, are hereby extended to said societies, and to such others as may be formed under the provisions of this act.

Powers.

Powers of
state society,
in forming dis-
trict societies.

SEC. 2. The state medical society, shall have power to organize medical societies in those districts, where none now exist, by the appointment of a president, secretary and three censors, who shall continue in office till the next annual meeting of said district society, and until their successors are

ected. The state society shall designate some suitable place in said districts, for the first annual meeting of said district societies.

SEC. 3. The state medical society shall meet annually at Indianapolis, on the first Wednesday next succeeding the meeting of the legislature; and at such other times as they may appoint. The several district societies, shall meet annually within their respective districts, on the first Monday in May, and at such other times, as they may appoint; the said district societies may be composed of all persons of good moral character, residing in their respective districts, who have been regularly licensed to practise medicine in this state, or who have been reputable practitioners in the state for two years next preceding the passage of this act, or who have graduated at any medical college in the United States. The state medical society and the several district societies, shall have power to make and enforce any by-laws not inconsistent with the laws of this state, and to impose and collect any fines for non-attendance or other delinquencies of their members, that they may deem expedient and proper.

Annual meeting of state society.

Of district society.

Members.

By-laws.

This act shall take effect and be in force, from and after its passage.

CHAPTER LXV.

An Act regulating Grist Mills and Millers.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the owner or occupier of every water grist mill, shall be entitled to have and receive, out of the grain which shall be ground in such mill, the following rates of toll, in full compensation therefor, to wit: For grinding and bolting wheat or rye into flour, one eighth part thereof; for grinding Indian corn, oats, barley or buckwheat, one eighth part thereof; for grinding malt and chopping rye, one eighth part thereof.

Rates of toll.

SEC. 2. The owner or occupier of every grist mill shall be accountable to the owners of grain received to grind, for the safe keeping of the same, whilst in such mill; and if any grain, bag, or cask containing the same, shall be lost or destroyed, whilst entrusted to the care of any miller, for the purpose of being ground, the owner or occupier, (as the case may be,) shall make good the same to the owner thereof; but in order to entitle any owner of grain, so deposited and

Accountability to the owners for grain, &c.

Owner of grain shall cause the bags &c. to be marked.

lost or destroyed, to recover the value thereof, against the owner or occupier of any such mill, the owner of the grain shall cause the bag or cask containing the same, to be distinctly and durably marked, with the initials of the christian and the whole surname of the owner, in plain letters; but nothing in this section contained shall be so construed, as to charge any owner or occupier of any mill, with any such loss, that shall happen by fire, or other unavoidable accident, without the fault or neglect of such miller, owner or occupier thereof.

Where water is backed, owner may erect fortifications, &c.

SEC. 3. It shall be lawful for the owner or occupier of any grist mill, saw mill, or other water works, and who shall have a dam across any water course, for such owner, as far as the water is caused by said dam, to be backed up said stream, and where the water has, or is about to wash a channel, so as to turn said stream out of the bed thereof, to erect such fortifications as he may think proper, to prevent the water from cutting or washing a channel, without the banks of such stream, and in so doing not to commit any unnecessary waste or damage: *Provided*, That nothing in this act contained, shall be so construed as to prevent the owner of such bank, from recovering any damages he may sustain, by reason of the erection of such fortifications.

Millers shall grind in turn.

SEC. 4. It shall be the duty of all millers who grind for toll, to well and sufficiently grind the grain brought to their mills, in due time, and in turn as it is brought; and every miller failing to grind as aforesaid, as the same shall come in turn, or who shall take or exact more than legal toll, shall for every such offence, forfeit and pay to the person injured, the sum of two dollars and fifty cents, recoverable by action of debt before any justice of the peace of the township where the offence shall have been committed: *Provided*, the same be sued for within twenty days.

Penalty for exacting more than legal toll

Millers to receive, load, & unload.

SEC. 5. That it shall be the duty of the owners or occupiers of any grist mill as aforesaid, to receive and carry, in and out of such mills, load and unload all grain brought to their respective mills, when demanded by the owner or carrier of such grain; and on failure thereof, shall be fined three dollars, on the complaint of the owner of the grain, before any justice of the peace of the proper township.

Millers, &c. exempt from militia duty, &c.

SEC. 6. That the owner or occupier of any such grist mill, in actual operation, shall be exempt from performing militia duty in time of peace, and from serving on juries: *Provided*, this exemption shall only extend to two persons at any one grist mill, such person or persons being the owners or occupiers thereof.

Owners of steam mills,

SEC. 7. It shall be the duty of every person who may be the owner of any mill propelled by steam, horse or other

animal power, and not by water, to post up in some conspicuous part of his mill-house or mill establishment, the rates of toll he may charge for grinding the different kinds of grain ground at his said mill; and for every day such person shall neglect to keep such rates so posted up he shall forfeit and pay a fine not exceeding three dollars, for the use of the seminary of the proper county; and if the owner of any such mill, shall at any time demand and receive a higher toll than what is contained in the list of rates posted up as aforesaid, he shall forfeit any sum not exceeding three dollars, for every such violation of this act, recoverable in an action of debt by the party injured: *Provided*, That such person shall have a right to change such rates of toll, by posting up such changed rates, two months previous to demanding and receiving the same.

&c. shall post rates of toll.

Penalty for neglect to post rates, & for taking higher rates of toll, &c.

Provido.

CHAPTER LXVI.

An Act concerning Free Negroes and Mulattoes, Servants and Slaves.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That from and after the first day of September next, no black or mulatto person coming or brought into this state, shall be permitted to reside therein, unless bond with good and sufficient security be given on behalf of such person of colour, to be approved of by the overseers of the poor of some township in this state, payable to the state of Indiana, in the penal sum of five hundred dollars, conditioned that such person shall not at any time become a charge to the said county in which said bond shall be given, nor to any other county in this state, as also for such person's good behaviour; which bond shall be filed in the clerk's office of the county where the same may be taken. And a conviction of such negro or mulatto, of any crime or misdemeanor against the penal laws of this state, shall amount to a forfeiture of the condition of such bond: *Provided*, That on any suit brought upon such bond for the penalty thereof, a less sum than the penalty, may, in the discretion of the jury trying such action, be assessed against any defendant or defendants, by way of damages.

Negroes and mulattoes migrating into this state, shall give bond, &c.

Bond to be filed. Conviction of crime, shall forfeit bond. Proviso as to damages.

SEC. 2. If any negro or mulatto coming into this state as aforesaid, shall fail to comply with the provisions of the first section of this act, it shall be and is hereby made the duty of the overseers of the poor, in any township where such negro or mulatto may be found, to summon him, her or them, to appear before some justice of the peace, to show cause

Negro failing to give bond, how proceeded against.

May be hired out, and proceeds applied to his benefit.

Or be removed under the poor law.

Penalty on sheriff or jailer for committing negro, without authority.

Penalty for harbouring negro who has not given bond.

Masters with their slaves, may travel through this state.

why he, she or they shall not comply with the provisions of this act; which summons shall be issued by a justice of the peace, on the application of any overseer of the poor in this state, and shall be executed by the proper constable. And if such negro or mulatto shall still fail to give the bond and security required by the first section of this act, after being brought before such justice as aforesaid, it shall be the duty of the overseers of the poor of such township, to hire out such negro or mulatto for six months, for the best price in cash that can be had. The proceeds arising from such hiring shall be paid into the county treasury of the proper county, for the use of such negro or mulatto, in such manner as shall be directed by the overseers of the poor aforesaid: *Provided however*, That it shall be lawful for the overseers of the poor, to remove such negro or mulatto, without the jurisdiction of this state, in the same manner and under the same rules and regulations as are pointed out in the act for the relief of the poor, instead of hiring such negro or mulatto out, at the discretion of said overseers.

SEC. 3. Any sheriff or jailer, who shall hereafter commit or suffer to be committed to prison, any negro or mulatto, without a lawful mittimus, or being otherwise authorized by law for that purpose, or under the provisions of this act, shall be fined, upon presentment or indictment, in any sum not less than one hundred, nor more than five hundred dollars.

SEC. 4. Should any person or persons knowingly engage or hire, or harbour such negro or mulatto hereafter coming or being brought into this state, without such coloured person first complying with the provisions of this act, such person or persons so offending, shall pay a fine of not less than five, nor more than one hundred dollars, to be recovered by presentment or indictment.

SEC. 5. That the right of any person or persons to pass through this state, with his, her or their negroes or mulattoes, servant or servants, when emigrating or travelling to any other state or territory, or country, making no unnecessary delay, is hereby declared and secured.

CHAPTER LXVII.

An Act establishing the office and defining the duties of Notary Public.

[APPROVED, JANUARY 26, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the governor shall appoint and commission, as many notaries public in this state, as he may deem ne-

necessary, who shall hold their offices for the term of five years Term, 5 years.
if they shall so long behave well.

SEC. 2. Each notary public, so soon as he shall receive his commission, shall repair to the clerk of the circuit court of his proper county, and shall take the oaths prescribed by Oath.
the constitution, and by law, and faithfully and impartially to discharge the duties of his office; a certificate of which oaths shall be endorsed on the back of his commission, by said clerk.

SEC. 3. Each notary public shall procure a seal, which Seal.
shall be called, The seal of the Notary Public; he shall when required, make all necessary attestations and protestations; for each of which, with his certificate and seal annexed, he shall be entitled to demand and receive of the person applying therefor, the sum of one dollar.

SEC. 4. Each notary public shall and may take and certify the acknowledgment of powers of attorney, mortgages, deeds, and other instruments of writing, with or without the release and assignment of dower, as fully in every respect, as any judge or justice may or can now do; for which he shall receive the compensation allowed by law to justices of the peace, for the like service. Take acknowledgment, &c.

SEC. 5. Each notary public shall, and he is hereby authorized to demand and receive for recording, if thereunto required, in a book to be kept for that purpose, seventy-five Fees.
cents for every attestation, protestation, or other instrument of publication, under his proper seal, relative to foreign bills of exchange, and for recording as aforesaid, relative to inland bills of exchange, twenty-five cents.

SEC. 6. It shall be the duty of the governor, to take bond Bond.
with sufficient security, from each notary public, before he enters on the duties of his office, in the sum of five hundred dollars, conditioned for the due performance of the duties thereof; which bond if forfeited, shall be sued for in the name of the state, and for its use.

CHAPTER LXVIII.

An Act concerning proceedings in Ejectment and for the relief of Occupying Claimants of Land.

[APPROVED, JANUARY 13, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That every tenant to whom a declaration in ejectment shall be delivered, for any lands, tenements, or hereditaments, within this state, shall forthwith give notice thereof, to his, her or their landlord or landlords, or his, her or their Tenant concealing declaration in ejectment, to forfeit two years rent.

bailiffs, receivers, agents or attornies, under the penalty of forfeiting the value of two years rent of the premises so demised or holden, in the possession of such tenant, to the person of whom he, she or they hold, to be recovered by action of debt, to be brought in any court where the same shall be cognizable.

Landlord admitted defendant in ejectment.

SEC. 2. That it shall and may be lawful for the court, where such ejectment shall be brought, to suffer the landlord or landlords, to make him, her or themselves defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he, she or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector, for want of such appearance: but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he or she had appeared, ought to have done, then the court where such ejectment shall be brought, shall and may permit such landlord so to do, and order stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Limitation of action of ejectment.

SEC. 3. No action of ejectment shall be commenced or maintained, for the recovery of any lands or tenements, against any person or persons who may have been in the quiet and peaceable possession of the same, under an adverse title for twenty years, either in his own right, or the right of any other person or persons, under whom he claims; and any action of ejectment, commenced contrary to the provisions of this act, shall be dismissed at the cost of the party commencing the same: *Provided however*, That this act shall not be so construed, as to affect any person who may be a feme convert, non compos mentis, a minor, or any person beyond the seas, within five years after such disability is removed.

Saving.

When occupying claimant shall be paid for valuable improvements.

SEC. 4. That in all cases where any occupying claimant, being in quiet possession of any land, for which such person can shew a plain and connected title in law or equity, derived from the records of some public office, or being in quiet possession of, and holding the same by deed, devise, descent, contract, bond or agreement, from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, or being in quiet possession of, and holding the same under sale for taxes, or under sale on execution against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, if any person or persons shall set up and prove an

adverse and better title to said lands, such occupying claimant holding as aforesaid, shall not be evicted or turned out of possession, until he or she shall be fully paid, the value of all lasting and valuable improvements made on said lands by such occupying claimant, or by the person or persons under whom he or she may hold the same, previous to receiving actual notice by the commencement of suit on such adverse claim, by such eviction, unless such occupying claimant shall refuse to pay the person so setting up and proving an adverse and better title, the value of the land, without improvement made thereon as aforesaid, upon the demand of the successful claimant as hereinafter provided.

SEC. 5. The court rendering judgment in any such case, against such occupying claimant, shall, at the request of either party, cause a jury of twelve good and lawful men of the proper county, to be empannelled and sworn, as in other cases of trial by jury, to assess the value of all lasting and valuable improvements made as aforesaid, on the land in question, previous to receiving actual notice as aforesaid, of such adverse claim; and in assessing the value of such improvements, the jury shall take into consideration, all damages which the land in question may have sustained by waste or cultivation, and deduct the same from the estimated value of such improvements; and the said jury shall also assess the value of the land in question, at the time of rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste or cultivation as aforesaid; and if either party be aggrieved by such assessment or valuation, the court may, in their discretion (as in other cases of trial by jury) set aside the verdict of assessment and grant a new assessment; or either party may, for error, appeal to the supreme court, or have a writ of error as in other cases.

The value of improvements how, and by whom estimated.

Persons aggrieved, how redressed.

SEC. 6. The successful claimant in all such cases, may at his election, either demand of such occupying claimant, the value of the land without the improvements so as aforesaid assessed, and convey the land in question to such occupying claimant, or pay the occupying claimant the value of the improvements so as aforesaid assessed, within such reasonable time as the court shall allow; and if such successful claimant shall pay the occupying claimant, the value of the improvements so as aforesaid assessed, within the time allowed by the court, or if, on demand of the value of the land without the improvements, and tender of a deed of the land in question as aforesaid by the successful claimant, the occupying claimant shall refuse or neglect to pay the successful claimant the value of the land, without the improvements so as aforesaid assessed, within such reasonable time as the court shall allow, then a writ of possession shall be

The successful claimant may sell the land, or pay the value of improvements to the occupying claimant.

Occupying claimant failing to pay the value of the land, ousted.

When occupying claimant may continue in possession.

issued in favour of the successful claimant; but if such successful claimant shall not demand the value of the land in question, without the improvements, and tender a deed as aforesaid, and shall refuse to pay the occupying claimant the value of improvements, so as aforesaid assessed, within such reasonable time as the court shall allow, such occupying claimant shall not be evicted from such land, but shall be suffered to remain in possession; and in no such case shall the occupying claimant who may be evicted, be liable to any action or prosecution for or on account of any rents or profits accruing, or waste or damages done to said land, previous to receiving actual notice as aforesaid of such adverse claim, unless such waste or damages shall exceed the value of the improvements so as aforesaid to be assessed, and then only the amount of such excess.

CHAPTER LXIX.

An Act for the Relief of the Poor.

[APPROVED, FEBRUARY 10, 1831.]

Oath of overseer of poor.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That each overseer of the poor elected or appointed according to law, shall, before he enter on the duties of his office, take an oath or affirmation, that he will discharge his duties faithfully and impartially.

Body corporate and politic.

SEC. 2. The overseers of the poor for the several townships, shall forever hereafter be in name and in fact, and they are hereby declared to be bodies politic and corporate in law, to all intents and purposes; and shall have perpetual succession, and by the name and style of "*The Overseers of the Poor*" of their respective townships, may sue and be sued, plead and be impleaded, in all courts of judicature; and by such name may purchase, take or receive any lands, tenements or hereditaments, goods, chattels, sum or sums of money, to and for the use of the poor of their respective townships, of the gift, alienation or devise of any person or persons whomsoever; to hold to them the said overseers and their successors in office, in trust, for the use of the poor forever.

Style and corporate powers

Poor to be farmed out, and how.

SEC. 4. It shall be the duty of the overseers of the poor, every year, to cause all poor persons, who have, or shall become a public charge, to be farmed out on contracts, to be made on the first Monday in May annually, and in such manner as the said overseers of the poor shall deem best calculated to promote the general good: *Provided*, nothing

Provido, as to

herein contained, shall prohibit any overseers of the poor, from receiving and accepting propositions at any time, for the keeping of such persons, and others, who may in the interim, become a county charge: *Provided moreover*, that the boards doing county business may, in their discretion, allow and pay to poor persons, who may become chargeable as paupers, and who are of mature years and sound mind, and who from their general character will probably be benefitted thereby, such annual allowance as will be equal to the charge of their maintenance, by employing the lowest bidder to keep them, the said board taking the usual amount of charges in like cases, as the rule for making such allowance: *Provided also*, that the overseers of the poor shall, in no case, farm out any pauper under the age of twenty-one years, if a male, or if a female, under the age of eighteen, if such overseers can possibly bind out as apprentices any such paupers.

farming temporarily.

Annual allowances may be made to certain paupers.

Proviso, as to binding minors, instead of farming out

SEC. 5. The overseers of the poor shall make a return to the clerk of the board doing county business, of the sum or sums of money for which the poor of their respective townships were farmed out, within fifteen days after every such contract shall have been made, which sums shall be paid quarterly out of the county treasury, upon the order of the board doing county business, in the same manner as other claims of the county are paid.

Overseers to return their proceedings to clerk.

SEC. 6. It shall be the duty of the said overseers of the poor, on any complaint made to them on behalf of the poor, to examine into the ground of such complaint, and if in their opinion the poor have not been sufficiently provided with the common necessities of life, or have in any respect been ill treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed such persons for keeping them, as such overseers may deem reasonable and proper.

Treatment of paupers, how inquired into, and remedy for misusage.

SEC. 7. Said overseers of the poor shall put out as apprentices, all poor children whose parents are dead, or whose parents shall be found by the said overseers unable to maintain them, males until they shall arrive at the age of twenty-one, and females until the age of eighteen years; and it shall moreover at the same time be their duty to execute indentures of such apprenticeship, a duplicate of which such overseers shall deposite with the recorder of the county, whose duty it shall be to enter the same of record in a book to be by him kept for that purpose; for which service he shall receive a fee of fifty cents, to be paid out of the county treasury; and for every failure so to record the same, when thereunto required, such recorder shall be subject to pay a fine, not exceeding one hundred dollars, upon indictment before the circuit court

Poor children to be put out as apprentices.

Indentures, duplicates, &c.

Penalty on recorder for failing to record indenture.

Copy of indenture to be evidence, &c.

Master, how sued on indenture.

Poor book, how kept.

Penalty on overseers refusing to serve

Overseers removing shall deliver over books, papers, &c.

Administrator &c. of deceased overseer shall also deliver over.

Legal settlement of poor.

Settlement of feme covert.

Paupers, how removed whence they came.

Bond to indemnify.

of the county; and a copy of such indentures, certified by such recorder, shall be evidence of the contract therein set forth, in all courts of justice within this state; and it is hereby made the duty of the prosecuting attorney of the proper circuit, upon the application of any minor, so bound as apprentice, or upon the application of any other person in his or her behalf, to institute and prosecute to final judgment and execution, an action against the master of such minor, for the breach of any stipulation or condition in favor of such minor in said indenture contained.

SEC. 8. The said overseers of the poor shall enter, in the poor-book of their respective townships, all poor persons in their said townships, who are unable to take care of themselves, and who shall in their opinion, be entitled to the benefit of this act, together with the date or time of the entry of such person.

SEC. 9. If any person appointed overseer of the poor of any township, shall neglect or refuse to take upon himself the said office, he shall forfeit six dollars, to and for the use of the poor of such township, at the suit of the board doing county business of the proper county.

SEC. 10. If any overseer shall remove out of his proper township, he shall previous to his removal, deliver over to some other overseer of the township from which he shall be so removing, all books, papers and other things concerning his office; and upon the death of any such overseer, his executors or administrators shall within forty days after his decease, deliver over all things belonging to his office, to some other overseer.

SEC. 11. Any person who shall have been a resident of any county one whole year, next preceeding his or her pauperism, shall be deemed to have a legal settlement in said county, as a poor person, within the provisions of this act.

SEC. 12. Every married woman during coverture, and after her husband's death, shall be deemed to be legally settled, in the place where he was last settled.

SEC. 13. Upon any complaint made by the overseers of the poor of the proper county, to any justice of the peace of said county wherein such township is situate, it shall be the duty of any one justice of the peace of said county, where any person not a citizen of such township according to the provisions of this act, is or are likely to become chargeable to said county, where he, she or they shall have come to inhabit, by his warrant or order, directed to said overseers, to remove and convey such person or persons to the county, township or state, where he, she or they was or were last legally settled, unless such person shall give sufficient security, to discharge and indemnify the said county

or place, to which he, she or they is or are likely to become chargeable.

SEC. 14. That hereafter, should any one within the description of poor persons named in this act, be found in any county or township, and the overseers of such township be unable to ascertain and establish the last place of legal settlement of such person, the said overseers shall proceed to farm out such person, in the same manner that other poor persons are hereby directed to be farmed out.

Transient poor, how provided for.

SEC. 15. If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the township in which he or she resides, shall refuse to give such person the benefit thereof, upon application of such person, the board doing county business may, if they should think proper, direct the said overseers to receive him or her upon their poor list.

How paupers may have the benefit of this law.

SEC. 16. If any person shall think himself or herself aggrieved by the order of removal made by any of the said justices, such person may appeal to the next circuit court to be held for the county from whence such person shall have been removed, which said court shall determine the same, and if there be any defects of form in such order, the said court shall cause the same to be certified and amended, without any costs to the party, and after such amendment, shall proceed to hear the truth and merits of the case. But no such order of removal shall be proceeded on, unless reasonable notice be given by the overseers of the township appealing, to the overseers of the township from which the removal shall be, the reasonableness of which notice shall be determined by the court to which the appeal is made; and if it shall appear to said court, that reasonable notice was not given, then said appeal shall be postponed until the next term of said court, at which time it shall be determined.

Appeal from order of removal.

Notice of appeal to be given, &c.

Continuance of appeal.

SEC. 17. If any person be removed by virtue of this law, from one county, township or place, to any other place within this state, by warrant or order, under the hand and seal of any justice of the peace as aforesaid, the overseers of the poor of the township or place to which the said person shall be removed, are hereby required to receive such person.

Poor removed to another county, to be received by such county.

SEC. 18. Whereas it sometimes happens, that men separate themselves without reasonable cause from their wives, and desert their children, and women also desert their children, leaving them a public charge, although such person may have estates which would contribute to the maintenance of such wives or children, the overseers of the poor of such township or place, having first obtained an order or warrant from one justice of the peace of the county or place

Persons abandoning their families, how proceeded against for maintenance.

Goods and
rents may be
seized.

Circuit court
shall order
sale of goods,
&c.

Where there
is no estate,
circuit court
shall order
payment, &c.
Order, how
enforced.

Security for
maintenance
when to be
taken.

Appeal from
justice's judg-
ment.

Restrictions.

Poor may
prosecute and
defend in for-
ma pauperis.

Counsel shall
be assigned.

where such wife or children shall be so left or neglected, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as said justice shall order and direct, as a provision for such wife's maintenance, or for the support of such child or children, as the case may be; which warrant or order being confirmed at the next circuit court of the county, such court shall make an order to the overseers to dispose of such goods and chattels, by sale or otherwise, or so much thereof, for the purposes aforesaid, as said circuit court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by said court, of his or her lands or tenements; and if no estate, real or personal, of such husband, father or mother can be found, wherewith provision can be made as aforesaid, said court shall order the payment of such sums as they shall think reasonable, for the maintenance of any wife or children so neglected, and shall commit such husband, father or mother, to the common jail, there to remain until he or she shall comply with said order, give security for the performance thereof, or be otherwise discharged by said court; and on complaint being made to any justice of the peace in any county, of any wife or children being neglected and left unprovided for, such justice shall take security from the husband, father or mother neglecting as aforesaid, for his or her appearance at the next term of the circuit court of the county, there to abide the determination of said court; and for want of such security to commit such person to jail.

SEC. 19. If any person shall find himself or herself aggrieved by any judgment of a justice of the peace, in pursuance of this act, such person may appeal to the next circuit court for the county, where sentence was given, except in cases of removal, and cases of poor persons becoming chargeable in one place, who are legally settled in another, as is otherwise provided by this act; whose decision in all such cases shall be conclusive.

SEC. 20. Every [poor] person who shall have a cause of action against any person, or who shall be defendant in any suit, shall have by the discretion of the court before whom such poor person would sue, or may be sued, (as the case may be) the benefit of process of all and every description, according to the nature of his cause of action or defence, free of charge; and such court shall direct the clerk and all other officers thereof to govern themselves accordingly, and shall assign to such poor person, counsel learned in the law, and appoint all other officers necessary to be had for the prosecution of such suit or defence, who shall severally perform the same without fee or reward therefor; and if any counsel or officer

or other person so assigned and directed to serve as aforesaid, shall exact and receive any fee or reward for any such service, either directly or indirectly, he shall forfeit and pay the sum of five hundred dollars, to the use of the party aggrieved, to be recovered by action of debt, with costs of suit.

Penalty on counsel, &c. for taking fee.

SEC. 21. Any judge of the circuit court shall have the same powers in vacation, to order the clerks of their respective courts, to issue writs and other process for any poor person, according to the nature of the cause, and to assign counsel, and appoint all other officers requisite to be had for the conducting of the suit.

Judges in vacation may make order in regard to poor suitors.

SEC. 22. On the application of any poor person, to the courts or judges thereof, for any writ or writs or other process, as hereinbefore provided for, it shall be the duty of such poor person, previously to make affidavit before some person authorized by law to administer oaths, that such poor person is not worth in property, clear of all just debts, ten dollars; and that he does not consider himself able, either by industry or otherwise, to procure a sufficiency of money to carry on or defend said suit or suits, mentioning the suit or action, and that injustice as he believes, is likely to be done him, for want of money or other necessary means sufficient to carry on said suit or action; which affidavit shall be duly subscribed by such poor person, attested by the person administering and taking the same, and shall be lodged by him with the court or judge, to whom the application is made. No defendant gaining any suit or action, brought against him by any such poor person, shall be held responsible for, or bound to pay any costs that may have accrued in defending such suit or action; but if such poor person shall obtain a judgment, he shall recover full costs, and the officers concerned shall receive their fees accordingly.

Affidavit of snitor, to entitle him to prosecute, &c. as a pauper.

Costs of snits in forma pauperis.

SEC. 23. The board doing county business of the several counties, are hereby directed to settle with the overseers of the poor in the several townships of their respective counties, at least once in every year, and oftener if they should deem the same necessary, and also to make to such overseers a reasonable compensation for their services.

Annual settlements with overseers.

SEC. 24. It shall be the duty of the overseers of the poor, on complaint made to them, that any persons not citizens of their respective townships, are lying sick therein, or in distress, without friends or money, so that they are likely to suffer, to examine into the case of such persons, and grant such temporary relief as the nature of the case may require; and if any person shall die within any township, who shall not leave money or other means necessary to defray his funeral expenses, it shall be the duty of the overseers of the poor of such township, to employ some person to provide for, and superintend the burial of such decedent, and the neces-

Temporary aid to transient poor.

Funeral expenses of poor, defrayed by county.

sary and reasonable expenses of such funeral, shall be paid by and upon the order of said overseers; and the board doing county business of the proper county at their next meeting, shall examine such claim, and if found reasonable, shall give an order on the county treasurer, for the amount thereof.

Tax for the support of the poor may be levied.

SEC. 25. The board doing county business in the several counties, may if they deem it expedient, annually at their session in May, levy and assess a tax for the support of the poor of their respective counties, on the objects from which the county revenue is or may be directed by law to be raised; the tax hereby authorized to be laid, shall be collected by the same officers or persons whose duty it may be to collect the state and county revenue, who shall pay the same accordingly into the county treasury.

Overseers shall annually make report to c'ty. board, and board shall audit claim, &c.

SEC. 26. The overseers of the poor of the several townships, shall annually at the May session of the board doing county business of their respective counties, present their accounts and make report generally of their proceedings for the past year, to the said board; and when said board shall audit and allow any claim or account presented by such overseers of the poor, they shall draw on the county treasurer therefor, whose duty it shall be, to pay the same out of any monies in the county treasury not otherwise appropriated.

Asylums for the poor may be erected, &c.

SEC. 27. That the board doing county business of the several counties, whenever they may deem the same advisable, shall purchase and hold a tract of land in the name of their respective counties, and erect such buildings thereon for the support and accommodation of the poor of their said counties, as they may deem expedient and proper; and in order that the same may be effected, such boards shall have power for that purpose, to assess on property liable to be assessed for raising a county revenue, not exceeding one fourth in addition to the rates at which such property may be assessed by the existing laws.

Poor shall be removed to asylums when erected.

SEC. 28. That so soon as the necessary provisions may be made, by the erection of suitable buildings, the said boards shall direct and order that all persons who have become a permanent charge as paupers on their counties, shall be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable.

Directors of poor asylums.

SEC. 29. That in order to aid in the employment and support of the poor aforesaid at such asylum, said boards are authorized to appoint one or more directors of such institution, under such regulations as said boards may establish.

Poor shall be from time to time, ordered to such asylum.

SEC. 30. That whenever such establishment may be arranged and prepared for the reception of the poor aforesaid, the said overseers of the poor, shall from time to time, as persons may become permanent charges to their respective town-

ships as paupers, have such persons removed to the said asylums; and the directors of such asylum shall have all the powers by this act granted to the overseers of the poor, so far as the same may be necessary and expedient, and shall also in like manner present their accounts and make report of their proceedings, and do and perform all other duties, so far as the same may be deemed requisite, as are herein prescribed and directed to be done by the overseers of the poor.

Powers of directors of asylums.

SEC. 31. If any action shall be brought against any overseer of the poor or other person, who in his aid and by his command, shall do any thing concerning his office, he may plead the general issue and give this act and every special matter in evidence; and if the plaintiff shall fail in his action, discontinue the same, or become non-suit, he shall pay the costs. Nothing in this act shall be construed to affect any rights accruing or which have accrued to any county under any former law.

Overseers sued, may plead general issue, &c.

SEC. 32. That nothing in this act contained shall be so construed as to authorize any overseers of the poor to bind out as apprentices, minors whose parents or guardians shall reside in the county, and object thereto, until the said parents shall be summoned to appear before the next probate court of the county, to shew cause why said minor should not be bound out, and if no sufficient cause to the contrary beshewn, the said court shall order said overseers to bind out such minors, according to the provisions of this act.

Proceedings where parents or guardians object to binding minor.

CHAPTER LXX.

An Act to provide for for the Partition of Real Estate.

[APPROVED, FEBRUARY 1, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That when two or more persons are proprietors of any real estate within this state, any of whom are desirous of having the same divided, it shall and may be lawful for the circuit court of the county where such real estate may be situate, on the application of any such person, (notice of such application having been previously given by the party so applying for, at least four weeks in some public newspaper in this state,) to appoint three disinterested freeholders, residents of said county, not related to either of the parties, as commissioners for dividing the said estate; and said commissioners having previously taken an oath or affirmation, before some justice of the peace in said county, honestly and faithfully to execute the trust reposed in them as commis-

Circuit court shall appoint commissioners, and notice of application how given.

Oath of commissioners.

- Their duty.** sioners aforesaid, shall proceed to make division of said estate, as directed by the court, among the owners and proprietors thereof, according to their respective rights; which partition being made by the said commissioners, or any two of them, and return thereof being made by the said commissioners, in writing under their hands to said court, particularly describing the lots or portions allowed to each respective owner or proprietor, mentioning which of the owners or proprietors are minors, if any such there be, which return being acknowledged by the commissioners making the same, before any one of the judges of the court aforesaid for the said county, and accepted by the court, and entered and recorded in the clerk's office, shall be a partition of such lands, lots and tenements therein mentioned. And in case of the death, resignation, removal or refusal to act of any commissioner, in any stage of the proceedings, the court shall in their discretion fill such vacancy; and such commissioner shall proceed to consummate such proceeding according to the intent and meaning of this act, and all acts done by such commissioners shall be deemed and taken as valid as though the same had been done and performed by the predecessor or predecessors of such commissioners.
- Return and its requisites.**
- Return to be recorded, and its effect.**
- Vacancy of commissioners, how filled.**

- Where the estate cannot be divided, court shall order sale.**
- Terms of sale.**
- Mutual releases.**
- Deed to purchaser and effect thereof.**
- SEC. 2.** That whenever any real estate held by sundry owners, is so circumstanced that a division cannot be had, without prejudice to some of the owners thereof, and the commissioners appointed to make partition of the same, shall report to the court that the same is not susceptible of an equitable partition, to the advantage of the proprietors thereof, or of any of them, the said court shall thereupon make an order for the sale of the whole or such part of the said land as may be by said commissioners reported as incapable of an equitable and just partition, under such terms, and upon such conditions, and subject to such restrictions, as the said court in its discretion shall order and direct, and if any partition of any part of said land, may be made to any portion or number of the proprietors thereof, the same shall remain valid if confirmed by said court, free and discharged from all claim and interest whatsoever of the residue of said proprietors; and such proprietors as may have their part or portion of such land set apart to them as aforesaid, shall release of record in the said court, all right, claim and interest whatsoever, in the residue and undivided portion of said land, and the proceeds thereof, to the residue of such proprietors—and such commissioners shall make good and sufficient deeds to the purchasers of such estate under the direction of the court, which shall operate as an effectual bar, both in law and equity, against such owners or proprietors, and all persons claiming under them; and the monies arising

therefrom, to pay to the persons entitled thereto under the direction of the court.

SEC. 3. The commissioners so appointed, shall be entitled to receive each one dollar per day, for their services rendered as aforesaid, together with such other sum, as the court may deem reasonable, for surveying, marking, chain carrying, platting and conveyancing, and judgment for the same and all costs shall be rendered against such owners in favor of the commissioners, on their motion, or of the officers concerned.

Compensation to commissioners &c.

SEC. 4. The guardians of all minors, shall be and are hereby respectively authorized and empowered, on behalf of the respective minors, whose guardians they are, to do and perform any matter or thing respecting the division of any lands, tenements or hereditaments, as hereinafter directed, which shall be binding on such minors and be deemed as valid to every intent and purpose, as if the same had been done by such minors, after they had arrived at full age.

Acts of guardians as to partition binding.

SEC. 5. No division or sale shall be made by order of the said court as above directed, contrary to the intention of any testator, as expressed in his last will and testament.

Division not to be made contrary to a devise.

SEC. 6. When two or more persons are the joint owners of any real estate, lying in more than one county, the circuit court of either county in which such estate may be, shall have jurisdiction to make partition of the whole of such estate, in the same manner as if the same were situate in but one county.

Partition, how made where estate is in several counties

SEC. 7. In all cases of partition of decedent's estates agreeably to this act, it shall be the duty of said commissioners, if thereunto required by the widow, to assign and set over to her, her dower of and in the lands and tenements of the deceased, agreeably to an act for the assignment of dower, and prescribing the mode of proceeding therein, and shall make due return of their proceedings, as directed by the first section of this act.

Dower may be assigned by commissioners, if widow request.

SEC. 8. When the heirs of any person dying intestate, shall be entitled by inheritance from such person, to any lands and tenements, and one or more of such heirs shall have been advanced in the life time of such person, by a portion or settlement in lands or otherwise, the said commissioners in making partition, shall take into consideration the value of such portion, at the time of its being advanced, and also the distribution shares of each heir in the personal estate of the deceased; and by their said division shall make the estate of all the heirs to be equal as near as can be estimated, according to their respective rights.

In partition among heirs, the commissioners shall consider advancement to any heir.

SEC. 9. Upon return of any partition made as aforesaid, the court to which the same is returned, may for good cause shewn, appoint new commissioners to review such partition,

Review of partition may be granted.

Review in favour of non-resident.

who shall in all respects be governed by the provisions of this act; and any person not a resident of the proper county, may within one year after such return, obtain a review as aforesaid; and any infant whose guardian shall not attend and approve such partition, any feme covert or lunatic, may within one year after the removal of his or her disability, have a review, upon shewing cause as aforesaid.

Concurrent jurisdiction of law and equity, in partition.

SEC. 10. That the courts of equity, may and shall have concurrent jurisdiction, with courts of law, in all cases of partition, with the usual powers of courts of equity, to whom jurisdiction in partition is given.

CHAPTER LXXI.

An Act relative to Limited Partnerships.

[APPROVED, JANUARY 21, 1828.]

Limited partnerships provided for.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That hereafter it shall and may be lawful to form limited co-partnerships, for the transaction of business, within this state, according to the provisions of this act: *Provided,* That nothing herein contained shall be construed to authorize any such partnership for any banking purpose whatever.

Special partners and their liability.

SEC. 2. That partnerships, to be constituted under this act, shall consist of one or more partners, jointly and severally responsible, according to the existing laws and rules of law upon that subject, who shall be called general partners, and of one or more partners, who shall furnish certain funds or capital to the common stock, according to the provisions of the articles of partnership, and whose liability shall extend no further than to the fund or capital so furnished, who shall be called special partners.

Special partners names not used in business.

SEC. 3. That such partnerships shall be conducted under a name or firm, to be composed of the names of all parties interested, excepting special partners, whose names shall not be used, under the penalty of being liable as general partners.

Mode of establishing.

SEC. 4. That no special partner shall transact any business on account of the partnership, nor be employed as agent, attorney in fact or otherwise, under the penalty of being liable as a general partner: *Provided,* This section shall not be construed to prevent the special partner from examining into the state and progress of the partnership concern, and advising as to its management, nor of acting as the counsel of said partnership.

SEC. 5. That before any partnership under this act shall be carried into effect, the name and firm under which the same is to be conducted, the names of the partners, both special and general, distinguishing them accordingly, and the places of their residence, shall be registered in a book to be kept for that purpose, at all times open to public inspection in the office of the clerk of the circuit court of the county in which the principal business of the partnership is carried on; and if the partnership shall at any time have places of business situated in different counties, the names of the partners and the title of the firm, shall be registered in like manner in every such county, before the commencement of business therein.

Publishing
special part-
nerships.

SEC. 6. That the said registry shall also designate those of the general partners, who are authorized to transact, manage and sign for the partnership, and for which alone the partnership shall be responsible; and also the amount of the capital furnished by every special partner, the periods at which the partnership is to commence and terminate, and all renewals and continuances; and all resolutions and alterations, prior to the original proposed continuance of the partnership, shall be registered as aforesaid.

Registry of
partnership.

SEC. 7. That it shall be the duty of one or more of the general partners, authorized by the partnership to manage their concerns, at the time of registering as aforesaid, to file an affidavit of the actual advance of such capital as by the special partner or partners at the commencement of the partnership, and according to the articles of partnership, was to be advanced, and of the execution of the obligation or obligations of such special partner or partners, for the payment of such sum or sums as are to be advanced at any time after the commencement of such partnership. And if any person shall be guilty of false swearing in the premises, he shall be deemed to have committed perjury, and shall be punished accordingly.

Affidavit of
capital.

SEC. 8. That it shall not be lawful for any such partnership, nor any member thereof, in contemplation of bankruptcy or insolvency, and with the intent or for the purpose of paying or securing any one or more of their or his creditors, in preference to any other of their or his creditors, to make any sale, conveyance, gift, transfer or assignment of their or his property or effects, or to confess any judgment or to create any lien whatsoever upon their or his property or effects, and every such conveyance, gift, transfer or assignment, and every such judgment or other lien, shall be and the same is hereby declared to be utterly void.

Conveyances
and transfers
made void in
certain cases.

SEC. 9. That the general partners in every such partnership, shall be liable to account to the special partners, and

Dividing profits.

to each other for the management of the joint concern, according to the law of partnership as now subsisting.

SEC. 10. That at such times as the partners in any partnership may determine, but not more than once in each and every year from and after the commencement of the same, the special partners may draw from the partnership funds, such sum or sums of money, as by the partners or a majority of them may be agreed upon for a dividend upon the stock of the special partner or partners: *Provided*, That no such dividend shall be drawn by any special partner, under any pretence whatever, until the general partner or partners, or some of them who are authorized to transact the business of said partnership, shall make and file an affidavit in the office of the clerk, in which registry is made, that the clear profits of the partnership since their commencement or last dividend (as may be) over and above all losses sustained, and bad debts made during the same time, exceed the amount of the dividend or dividends declared: *And provided*, That unless, as above provided, no part of the capital stock of any partnership shall be withdrawn, by any special partner, and that in case of bankruptcy or insolvency of the partnership, no special partner shall be considered or allowed to claim as a creditor under any circumstance.

Suits prosecuted and defended in name of general partners only.

SEC. 11. That suits to be brought by partnerships formed under this act, whether at law or in equity, shall be in the names of the general partners, and suits against such partnerships, shall be against the general partners only, except where special partners have become liable as general partners, in which case they may be made as such, defendants in such suits.

Terms published in newspaper.

SEC. 12. That it shall be the duty of the general partners to publish the terms of their partnership as registered, in some newspaper, to be designated by the clerk with whom the registry is made, for three months next ensuing such registry.

SEC. 13. For performing the duties required of him by this act, the clerk shall be entitled to demand and have one dollar for each registry.

CHAPTER LXXII.

An Act regulating the Practice in Chancery.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That original bills may be filed in vacation or

in term time, and that thereupon process may forthwith issue under the seal of the court, returnable to the first day of the next term of the court.

SEC. 2. When one or more of the defendants resides in or flies to another county, the process may be directed to such county, and there executed by the proper officer, but no decree shall be entered against such defendant or defendants, unless a cause of action shall be made out against some defendant who resided in the county at the time of filing the bill. But in all cases where the cause of action is local, or where it shall appear by affidavit that the defendant has removed from the county, after the filing of the bill, the process may issue from that to any other county, and be served by the proper officer, and decree be thereupon had according to the rules of the court, as in any other cases. And when process is returned not executed at the return day thereof, the clerk may issue an *alias*, *pluries* or other process, without an order of court; and in all cases where the cause of action is local, and the subject matter thereof is situate in several counties, the complainant shall have his election in which of the several counties he will commence his suit, and the court of chancery of such county, shall have jurisdiction thereof.

SEC. 3. Whenever it shall appear by affidavit filed, or the officer's return, that any defendant is not found, or is not a resident of this state, the court may grant an order for publication, to notify the defendant of the pendency of the bill, for three weeks successively, in some public newspaper of general circulation.

SEC. 4. The sheriff or other officer shall endorse on the process the time it was received and executed, subject to the same regulations and penalties, as are prescribed in the act regulating the practice in suits at law.

SEC. 5. The complainant may make as many defendants to his bill as he may think proper, although they may claim under different titles; but if the bill be dismissed as to any one of the defendants, or a decree entered in his favour, he shall be entitled to his costs, unless the court for special reasons shall otherwise decree.

SEC. 6. The complainant may amend his bill at any time before answer, or in an immaterial part after answer, without the payment of costs; but if he amends in a material part, after answer, he shall pay the costs occasioned by the amendment. And the defendant may amend his answer before or after replication, subject to the same rules; but after appearance, process executed or publication, the amended bill shall not require new process or publication.

SEC. 7. When the process has been executed thirty days, or publication made sixty days before the term, the defendant shall plead or answer, on or before the first day of the

Bills may be filed in vacation.

Process may be issued to another county when one defendant resides in county where issued. Where issued, when cause of action is local &c.

Alias, pluries, &c.
Election, where to proceed.

Publication vs. non resident.

Indorsement on process.

Complainant may make as many defendants as he chooses.
Costs.

Amendments of bill.

Of answer.

Time to plead &c.

Judgment for failure to plead or take issue.

term, and shall not thereafter file any special demurrer or dilatory plea; and if he fails to plead, answer or demur, on the calling of the cause, the bill may be taken as confessed against him. If he pleads, answers or demurs, the complainant shall reply, and the defendant rejoin, and so on if necessary, until the issues in law or in fact are made up; and if either party fails to complete the issue on his part, the court for such failure may enter up a decree against him, or in their discretion, give further time for the completion of the issue.

Answer to be on oath, and effects of answer.

SEC. 8. All answers shall be upon oath or affirmation, and if the answer denies the material allegations in the bill, the complainant shall not have a decree, unless the bill is proved by two witnesses, or by one witness and corroborating circumstances.

Defendant may require of complainant to answer on oath.

SEC. 9. The defendant may introduce any new matter in his answer, or file interrogatories and call upon the complainant to answer on oath or affirmation; which the complainant shall do, under the same regulations that are imposed on the defendant in answering the bill, except that he may either answer immediately, or demand a continuance, and have until the first day of the next term to answer.

Defendant may make a new party &c.

SEC. 10. The defendant may by his answer introduce a new party, and call upon him to answer any allegations or interrogatories he may set forth, whereupon process may issue, and such other proceedings be had, as if such matter had been exhibited by bill.

Exceptions.

SEC. 11. Exceptions to an answer may be taken at any time before replication, and shall stand for hearing at the term when they are taken.

Issues, how made & when tried.

SEC. 12. The issue may be made up by bill and answer, where a special replication is unnecessary; and when depositions are to be taken, the cause shall stand for hearing, at the term next after the issue is completed. When an issue is to be tried by a jury, the court may appoint the time of the trial, as soon as the circumstances will admit of it; and issues in law shall stand for trial as soon as they are made up.

Jury trial.

Time given by court to answer over.

SEC. 13. After the trial of an issue, or the overruling of a demurrer in a case where by the chancery practice the defendant has a right to answer, or where an answer has been adjudged insufficient, the court may appoint a time, in which the defendant shall answer; and if he fails to answer in that time, they may proceed against him, as for failure in the first instance.

Attachments for failing to answer.

SEC. 14. Attachments for failing to answer, may be issued by the court, returnable at such time as they may appoint.

Pleadings may be lodged.

SEC. 15. Either party may lodge his answer or other pleadings with the clerk in vacation, but they shall not be

considered as filed, until entered on the order book in open court: the clerk shall endorse on them the time they are filed in court, but need not copy them on the order book.

SEC. 16. The complainant may take depositions in thirty days after the subpoena has been executed, or publication made; and the defendant may take depositions as soon as his answer is filed; each giving the opposite party reasonable notice of the time and place they are to be taken.

SEC. 17. If at any time the complainant fails to prosecute, and the defendant fails to appear, the court may dismiss the bill or continue the cause, at their discretion.

SEC. 18. Whenever a decree is entered up against an absent non-resident defendant, he shall be permitted to open the decree, at any time within one year, by appearing and answering the complainant's bill, and paying the costs subsequent to the time of answering, and if such defendant is an infant, *feme covert*, *non compos mentis*, or without the United States on public business, he or she shall be allowed one year after such disability is removed, in which to open such decree.

SEC. 19. Bills of review and revivor, and supplemental bills, may be filed according to the usage of courts of chancery; and continuances granted for good cause, at any stage of the proceedings, on payment of costs.

SEC. 20. The court in term time, or president judge, or the two associate judges, in the presence of each other in vacation, shall have full power and authority, to grant injunctions to stay all proceedings on judgments at law, to suspend proceedings on suits that are pending, to stay waste, and to exercise all powers that are usual for courts of chancery to exercise in granting restraining orders and injunctions, and to issue all other process necessary to carry into effect the provisions of this section, by attachment or otherwise, according to the exigency of the case, and agreeably to the usages of courts in chancery; and their jurisdiction shall extend to judgments rendered by justices of the peace, and matters that are made cognizable before them. And the power and authority hereby given, may be exercised by the two associate judges, to operate in their own county, and by the president judges, to operate in any county in the circuit over which they preside.

SEC. 21. Injunctions shall not be awarded to stay proceedings on judgments at law, but upon bill filed, and supported by oath or affirmation, and a release of all errors in the judgment at law, prayed to be enjoined, under the hand and seal of the party asking the same, endorsed and signed on the bill; nor for a greater sum than the complainant shall shew he is not equitably bound to pay; nor unless the complainant shall give bond with security, to be approved

ed with clerk in vacation.

Depositions, when taken.

When cause may be dismissed or continued.

Non-resident defendant may open decree, &c.

Infant, &c. may open decree, &c.

Bills of review and revivor, &c. Continuances.

Injunctions by whom awarded, and in what cases.

Attachments to enforce orders of court.

Judgment of J. P.

Injunctions on judgments at law. Release.

Bond.

Notice.

Injunctions in other cases.

Subpœna to issue with injunction.

Motion to dissolve injunction.

Ne exeat, requisites to being issued, &c.

Bond.

Suit on ne exeat bond.

Penalty of ne exeat bond.

ed of by the court, judge or judges, in a sufficient sum to secure the payment of the judgment so enjoined, with ten per centum damages thereon, in case of dissolution, and all costs; nor unless they shall be satisfied of the complainant's equity; nor unless the opposite party has had ten days notice of the time and place of application, unless the application is made in open court, when no notice shall be required. And in all other cases where they shall be called on to exercise any of the powers above given, the party making the application shall file his bill, supported by oath or affirmation, and give bond and security, to be approved of by the court, judge or judges, who shall fix the penalty, conditioned to pay all damages and costs, to the party enjoined or restrained, that may accrue, and they being satisfied of the equity of the application and notice as above having been given, unless in cases of emergency.

SEC. 22. Whenever an injunction is awarded, the clerk shall issue a subpœna with the injunction, which shall enjoin all parties, attornies and officers, from proceeding on the judgment so enjoined; and all proceedings on said judgment, and any execution thereon shall be immediately stayed; and every officer in the state, shall immediately desist from any further proceedings thereon; and if the sheriff or other officer, shall have taken any money or property on said judgment, he shall restore the same to the person from whom it was taken, and return such execution enjoined.

SEC. 23. Motions to dissolve injunctions on the bill for want of equity, may be made without notice, but motions to dissolve on bill and answer, or on bill, answer and exhibits, shall not be made, until the party has had ten days notice of such motion. On the dissolution of any injunction, the court shall decree in favor of the defendant, ten per centum on the judgment at law.

SEC. 24. The court in term time, or the circuit judge, or the two associates in the presence of each other, in vacation, may grant writs of *ne exeat*; but not until the bill is filed and supported by oath or affirmation, nor until the party applying for the same, shall give bond in the clerk's office in such sum and with such security, as the court, judge or judges granting the same may direct, conditioned for the payment of all damages the defendant may sustain, if it shall appear that said writ was obtained without a just cause. And if the party so stayed, shall think himself aggrieved thereby, he may bring suit on said bond; and if it shall appear that the writ was unjustly obtained, he shall recover the damages he has thereby sustained.

SEC. 25. The court, judge or judges granting said writ, shall endorse thereon, in what penalty bond with security shall be required of the defendant, and if the defendant shall

go out of the state, and return before his appearance in court is required, or before it is necessary for him to perform any order of the court, such departure shall not be considered a breach of the condition of said bond.

Breach.

SEC. 26. If the defendant shall by answer or otherwise, satisfy the court, that there is no reason for his being restrained, or give sufficient security to perform the decree of the court, the writ may be discharged.

Ne exeat writ may be discharged.

SEC. 27. All notices required by this act, shall be given to the party, his agent or attorney at law, if either of them reside in this state, and may be served by the sheriff or other officer of the proper county; but if neither the party, his agent or attorney resides in, or shall both be absent from the state, the notice may be filed in the clerk's office where the suit is depending, or published three weeks successively in some public newspaper.

Notices, to whom given.

SEC. 28. Costs shall be taxed in favour of the successful party, except the court for special reasons shall otherwise decree; and executions may issue into any county in this state, to carry decrees into effect, in the same manner, and to operate in the same way, as on judgments at law.

Costs, execution, &c.

SEC. 29. It shall not hereafter ever be necessary to make up a feigned issue, but in all cases where questions arise, which according to the practice, usage and discretion of courts of chancery, ought to be referred to a jury for trial, the court shall direct a comprehensive entry and note of the matter in issue so to be tried, to be made, upon which the court may order a jury empannelled and sworn to try the same, and the verdict of such jury shall be taken for the information of the court.

Feigned issues abolished, and facts tried by jury, &c.

SEC. 30. Whenever it is necessary to revive a suit in chancery, in which the answer of a defendant [may have been filed,] who shall die after it is filed and before a decree is rendered, on application for that purpose, an order may be made for reviving the suit in the name of the legal representatives of the deceased, without a bill of revivor. But where such order is made against the representatives of the defendant, a copy thereof shall be served on the person or persons so made defendants, by order of revival, if they reside within this state, and where the defendant or defendants so made, are not inhabitants of this state, or cannot be found within the reach of the process of the court, the said order of revival shall be published in some public newspaper, as in other cases of absent defendants.

Revivor vs. representatives of a decedent, where answer has been filed.

SEC. 31. In all cases where the complainant or complainants shall know the names of some of the heirs who shall be made defendants, or whom it shall be necessary to make defendants to any suit, and shall not know the name of others, or shall not know whether there are others or not, it

Proceedings vs. known and unknown heirs.

shall be lawful for him, her or them, to proceed by subpoena against those whose names are known and resident in the state, and by publication against those whose names are unknown, or who are non-residents of the state.

Commissioner to convey real estate, to be appointed.

SEC. 32. Whenever a decree shall be rendered vesting the legal title of any real estate, which may be in controversy, in any person or persons, body politic or corporate, or when a decree shall be made to vest the legal title of any person or persons who are or may be labouring under legal disability to convey, the court may appoint a commissioner to convey the same by deed, during the term at which the said decree may be rendered, or at the next term, as the court in their discretion may order and direct, to the person or persons, body politic or corporate that may be entitled to the same, which deed so made, acknowledged before and approved of by the court, shall vest the legal title of such real estate in the grantee or grantees, to all intents and purposes whatever, and shall be spread upon the order book, and form a part of the record of the suit in which said decree is made.

Effect of conveyance.

Masters in chancery to be appointed.

SEC. 33. The president judges of the circuit courts in this state, shall have power to appoint as many masters in chancery as such judges may deem expedient, which masters in chancery shall receive their appointment in writing from the judge, and reside in the counties for which they are appointed, and shall hold their appointments until removed by the court. Each and every master in chancery so appointed, shall before he enters on the duties of his office, take an oath before the clerk of the circuit court, well and truly, faithfully and impartially to discharge the duties of master in chancery, which appointment and oath it shall be the duty of the clerk to enter at full length on the order book of the court, after which the said master in chancery so appointed and sworn as aforesaid, shall have full power and authority to take the attestation to all bills and answers in chancery, to which an oath or affirmation is necessary. to take depositions, administer oaths to witnesses, and to strike the balance of accounts that may be in controversy; and exceptions to a master's report may be taken in the circuit court, on or before the first calling of the cause after the report is filed, in such manner as the court by rule shall direct: *Provided however*, nothing in this act shall be so construed, as to prevent justices of the peace, from taking depositions, administering oaths and taking acknowledgements as heretofore.

Their oath.

Powers of masters in chancery.

Exceptions to master's report.

Depositions, when to be filed in circuit court and before J. P.

SEC. 34. Every deposition intended to be read in any suit at law or in chancery, in any court or in any suit, or before a justice of the peace, shall be filed in such court, at least one day before such suit is ready for trial, or any time

previous to the trial, before the justice; and such deposition shall be published by order of the court, on the motion of either party, at any time after the same is so filed; and no objection to the admissibility of such deposition, either in whole or in part, as evidence in such cause, shall be valid, unless the same be made before entering into the trial of such cause: *Provided*, That any such objection, the cause of which arises after such trial or hearing is gone into, shall be valid: *And provided also*, That if the incompetency of the deponent as a witness, appear at any stage of the proceedings, it shall avoid his evidence.

Objections to deposition when to be taken.

Proviso.

CHAPTER LXXVIII.

An Act regulating the Practice in Suits at Law.

[APPROVED, JANUARY 29, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever hereafter any writ shall be executed, and the declaration filed in any case, ten days before the first day of the term of any circuit court, the said case shall stand for trial at that term, whether the writ issued previous to or after the filing of the declaration in such case.

Declaration when to be filed.

SEC. 2. All process (except subpoenas) shall be sealed by the clerk with the seal of the court, and made returnable to the first day of the next term.

Process shall be sealed.

SEC. 3. The process against a corporation, shall be a summons, which being executed on the president, presiding officer or a majority of the members, the proceedings shall be the same, in other respects as against natural persons.

Process vs. a corporation.

SEC. 4. Bail shall be required, in all actions of debt and case, founded on any writing, for the payment of money, and in actions of covenant; and in all actions where an affidavit shall be made by the plaintiff or any person on his behalf, and filed in the clerk's office, of an existing debt, then due from the defendant to the plaintiff. And the sum specified in such writing or in such affidavit, shall be endorsed by the clerk on the writ; and in all other actions whenever it shall appear to any judge of the circuit court, by an affidavit filed in the clerk's office, that bail should be required of the defendant, he shall endorse on the writ an order to that effect; and affidavits to hold to bail, made in any of the states of the Union, or territories thereof, and authenticated in the same manner as is required by the laws of this state, for the admission of records and judicial proceedings of

Bail, in what cases required

Amount of bail to be endorsed.

Affidavit to hold to bail.

Affidavit made in another state.

other states, shall be sufficient authority for the clerk or judge to endorse on the writ an order for special bail.

Recognizance
of special bail

SEC. 5. When process requiring bail is executed, no appearance bail bond shall be taken, but the officer executing the same, shall take a recognizance of special bail, of some freeholder resident in the state, on the back of the process, in substance as follows: "I A. B. do hereby acknowledge myself special bail for the within named C D., in the suit named in the within writ. Witness my hand and seal this day of . . . A. B."

Which shall have all the force and effect of a regular recognizance of special bail, and shall be in all respects obligatory as such.

Exceptions to
sufficiency of
bail.

SEC. 6. If the plaintiff shall deem the bail insufficient, he may at the term to which the writ is returned, or at the term next thereafter, (if final judgment shall not be given) object to the sufficiency of the bail, by giving three days notice of the objection, to the officer to whom the writ was directed, and the court shall hear and determine, as to the sufficiency of the bail as heretofore. If the notice is adjudged insufficient, the court may allow the plaintiff during the same or until the next term, to give notice, and make his objections, if final judgment, in the mean time, shall not be given.

Bail not discharged, if adjudged insufficient, but officer shall be liable.

SEC. 7. If the bail is adjudged insufficient, and other bail approved by the court is not given, the bail shall not thereby be discharged, but if the plaintiff shall proceed to judgment against the bail, and the demand cannot be obtained, the officer shall be liable for the amount of his demand, and all costs of suit, which may be recovered in an action against the officer or his securities, or all or either of them.

Time of executing process
to be endorsed

SEC. 8. When the sheriff executes any writ or process of any description, he shall insert in his return, the time it was executed, and also endorse on all process, except subpœnas and venire, the time such process came to his hands.

Alias, pluries
and other process.

SEC. 9. When the process shall be returned not executed, on the return day thereof, the clerk may issue an *alias*, *pluries* or other process, without an order of the court, or if the process should be returned "executed" as to one or more of the defendants, and "not found," as to others, it shall be lawful for the plaintiff to suggest such return upon the record, and proceed to final judgment and execution against the defendants, upon whom the process was executed, and may at any time thereafter, proceed against those "not found;" but it shall not be lawful for any officer to return "not found" as to any defendant, unless he shall have been once at least, to his usual place of residence, if he have any.

Suggestion of
not found as
to some, and
judgment vs.
others.

SEC. 10. When one or more of the defendants reside in any

other county in the state, the process may issue to such county, and be executed by the sheriff of that county, and returned to the office from whence it issued. But no judgment shall be given against such defendant, unless the process shall have been executed on some resident defendant of the county where the suit was commenced.

Process to another county

SEC. 11. If the defendant reside in the county where the suit is instituted, and shall afterwards flee or remove therefrom, the plaintiff on filing an affidavit of the fact, may have process directed to any other county, and if it is returned executed, he may proceed as in other cases.

Process where defendant removes after suit.

SEC. 12. All actions of debt on simple contract, and for rent arrear, actions on the case (other than for slander,) actions of account, trespass, trespass *quare clausum freget*, detinue and replevin for goods and chattels, shall be commenced within five years after the cause of action accrued, and not after. All actions of trespass for assault and battery, and for wounding and imprisonment, shall be commenced within three years after the cause of action accrued, and not after. All actions upon any act of assembly, now or hereafter to be made, when the right of action is limited to the party aggrieved, shall be commenced within two years after the cause of action accrued, and not after, except when the right of action is limited by the act to a shorter period; and all actions of slander shall be commenced within one year after the cause of action accrued, and not after, saving however the right of infants, femmes covert, persons non-compos mentis, or without the jurisdiction of the United States, until one year after their several disabilities are removed: *Provided however*, That no statute of limitation shall ever be pleaded as a bar, or operate as such, to any action founded on an instrument or contract in writing, whether the same be sealed or unsealed, nor to running accounts between merchant and merchant: *And provided also*, That if any person or persons against whom there is or shall be any of the causes of action specified in this section, be or shall be at the time of any such cause of action given or accrued, without the jurisdiction of the United States, that then such person or persons who is or shall be entitled to such action, shall be at liberty to bring said actions against said person or persons, within one year after their return from without the United States: *And provided further*, That nothing in this act shall be so construed as in any manner to restrict or limit any defendant or defendants to any action in pleading, set-off or payment thereto, to the amount of the plaintiff's cause of action: *And provided also*, That if in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and for matter alleged in arrest of judgment, the judgment

Limitation.

Proviso as to actions founded on writing and mercantile accounts.

Proviso as to defendants without the United States.

Proviso as to judgments reversed, &c.

Proviso as to
defendants re-
moving from
other states.
&c.

be given against the plaintiff, that he take nothing by his writ, plaint or bill; that in all such cases, and in cases discontinued for want of a court at any regular term, the plaintiff, his heirs, executors or administrators, as the case may require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or such discontinuance, and not after: *Provided further*, That on all contracts made in this state, if the defendant shall be without the same when the cause of action accrued, said action shall not be barred until the times above limited shall have expired, after the defendant shall have come within the jurisdiction thereof; and on all contracts made without this state, if the defendant shall have left the state or territory where the same was made, and come within the jurisdiction of this state, before cause of action accrued thereon, the plaintiff shall not be barred his right of action, until the time above limited, after the said demand shall have been brought within the jurisdiction of this state.

Bond for costs

Suit on bond
for costs.

Affidavit for
security for
costs.

Court may
order security
for costs.

Writs in suits
on bonds to
the state, &c.
how endorsed

SEC. 13. No suit shall be commenced by a non-resident, until he shall file in the clerk's office a bond with security, to be approved of by the clerk, for the payment of all costs that may accrue in consequence thereof, either to the opposite party or to the officers of the court; but the suit shall not be dismissed for the want of such bond, if the plaintiff or his agent shall file the same in open court, on the calling of the cause, which bond when executed, shall have a retrospective effect, and include all previous costs; and such bond for costs may be put in suit by any of the aforesaid persons, for the sums to which they may be respectively entitled. And whenever hereafter any action may be commenced or pending in any circuit court, or before any justice of the peace of this state, and the defendant or defendants shall make and file his, her or their affidavit, that he, she or they verily believe that such plaintiff or plaintiffs, have no just cause of action, claim or demand against the said defendant or defendants, and that they have good reason to believe that said action has been instituted from a disposition to vex, harass or oppress said defendants, and that they do not expect to be able to recover or realize from said plaintiff or plaintiffs, the costs that will or may be adjudged to them in said action, the circuit court or justice of the peace, (as the case may be) before whom such action is brought, shall be authorized in their discretion, to exact from such plaintiff or plaintiffs, security for costs, in the same manner as if said plaintiff or plaintiffs were non-residents.

SEC. 14. When suit is brought on any bond given by any executor or administrator, or any state, county or township officer, to and in the name of the state of Indiana, the go-

vernor, the associate or other judges, sheriff or other civil officer, for the performance of any duty or trust, it shall be the duty of the person for whose benefit the same was instituted, to endorse on the writ or other process, for whose benefit the same was issued; and if he fails to succeed in the suit, he shall be liable for all costs that accrue thereon.

SEC. 15. The clerk, within three weeks after the adjournment of the court, shall make out his docket for the succeeding term, wherein he shall docket all suits then in court, and whenever afterwards a writ is issued, he shall enter the suit on his docket; he shall set as many causes for each day, as in his opinion will be disposed of by the court, always docketing the actions of debt for the second day, and the chancery cases at the end of the common law suits, to no particular day, which may be taken up at any time in the discretion of the court.

Docket of suits when to be made and how kept.

SEC. 16. It shall be the duty of the president of each circuit, once in every year, to examine each clerk's office in his circuit, and report to the court in writing, the situation of the books and papers, which report shall be spread upon the order book.

Clerk's offices to be examined annually.

SEC. 17. All suits shall stand for trial at the term to which the process shall be returned executed, but if it does not appear by the officer's return, that the process was executed ten days before the return day thereof, and if the declaration was not filed ten days before such day, the same shall be continued until the next term, unless both parties consent to a trial.

Trials, when to be had.

Continuance.

SEC. 18. If the writ issues before the declaration is filed, the plaintiff shall file his declaration, on or before the calling of the cause, or on failure, the suit shall be for that cause dismissed.

Declaration, when to be filed.

SEC. 19. The plaintiff in replevin, and the defendant in all actions, may plead as many several matters in law or fact, as he may deem necessary for his defence.

Defence, all matters of, may be pleaded.

SEC. 20. Pleas to the jurisdiction of the court, pleas in abatement and special demurrers, shall be filed on or before the day for which the cause was docketed, at the first term at which it stands for trial, and shall not be received at any time afterwards.

Pleas in abatement, when to be filed.

SEC. 21. No plea in abatement, plea of non est factum, non-assignment, nor any other plea, replication or other pleadings, denying or requiring proof of the execution or assignment of any bond, bill, release or other instrument of writing, which is the foundation of any suit or defence, and is specially set forth in the declaration, plea or other pleadings shall be received, unless supported by oath or affirmation. When such plea or other pleading denies or requires proof of any assignment, the oath or affidavit shall be

What pleas must be sworn to.

that the party has reason to believe, and does believe that the assignment was not made before the suit was commenced.

Bonds penal
in actions on,
several
breaches may
be assigned.

SEC. 22. In actions on bonds, or for any penal sum, for the non-performance of covenants or agreements in any indenture, deed or other writing contained, the plaintiff may assign as many breaches as he may think proper, and the jury upon the trial of such action, may assess damages for as many of the breaches as the plaintiff may prove, and the like judgment shall be entered as heretofore in such actions; and if judgment on demurer, by confession, or nihil dicit, shall be given for the plaintiff, he may assign as many breaches of the covenants or agreements as he may think proper, and the jury shall inquire into the truth of those breaches, and assess the damages the plaintiff has sustained thereby, and execution shall issue for that sum, and the judgment shall remain as a security to the plaintiff, his heirs, executors and assigns, for any other breaches that may afterwards happen; and he or they may have a scire facias against the defendant, and assign any other breaches, and thereupon damages shall be assessed and execution issue, as in the first instance. And in actions on penal bonds for the payment of money, if the plaintiff shall recover, the judgment shall be given for the penalty of the bond, to be discharged by the payment of the principal and interest and costs of suit, and execution shall issue accordingly; but if before judgment, the defendant shall bring into court the principal and interest due on such bond, he shall be discharged therefrom, and the judgment shall be given for the costs only.

Judgment on
penal bond.

Defendant
may bring
money into
court.

Bonds public,
for whose use.

SEC. 23. All bonds or obligations by this or any other law, directed or required to be given, relating to minor's or decedent's estates, and all such bonds as by any law are directed to be given by any judge or other officer or person in office, for the due execution of his or their respective offices or employments, are hereby declared to be to and for the use of, and in trust for the person or persons concerned; and the benefit thereof shall be extended from time to time for the relief and advantage of the party aggrieved, by the misfeasance, malfeasance or non-feasance of the officers that did or shall give the same; and such bonds shall not be void on the first recovery, but may be put in suit from time to time, at the instance and for the benefit of the party injured, whenever and as often as justice requires it.

One recovery,
no bar.

Bonds, &c.
not void for
want of form.

SEC. 24. When any recognizance or bond and security are required by law to be given, by any public officer, executor or administrator, or any other person whatsoever, made payable to the state of Indiana, to secure the payment of money or performance of any contract or duty, for the benefit of the state or any individual, such recognizance or bond shall not be void for want of form; and when such bond or recog-

nizance has not the substantial matter required by law, the principal obligor and his securities shall not on that account be discharged, but they shall be equitably bound to the party interested, and such party may by action of debt or scire facias, in any court of competent jurisdiction, suggest that such bond or recognizance is defective, and recover his equitable demand of [from] the principal, and the person or persons who intended to become and were included as securities.

Remedy on defective bond.

SEC. 25. In any action on a bond or single bill, or in debt or scire facias on a judgment, if before action brought, the defendant has paid the principal and interest due by the defeasance or condition, he may plead payment in bar, and in any action to recover the forfeiture annexed to any articles of agreement, covenant, charter party or other writing obligatory, or for the forfeiture of real estate, by deed of mortgage or bargain and sale with a defeasance, (when such forfeiture, breach or non-performance is found by a jury, by confession, by default or on demurrer,) the court shall give judgment thereon, for so much as in equity and good conscience is due to the plaintiff.

Plea of payment, when to be allowed.

Judgment, for what amount to be given.

SEC. 26. When two or more dealing together are indebted to each other, upon any contract, and one of them commences an action, if the other cannot gainsay or deny the same, he may plead payment of all or part of the debt or demand, and give any contract, account or receipt in evidence, which shall be set forth in such plea; and if it shall appear that the defendant has paid the debt or demand, he shall have judgment for costs; and if it shall be found that part of the sum has been paid, the plaintiff shall have judgment for the residue only: but if it shall appear that the plaintiff's demand is over paid, the jury shall give their verdict in favour of the defendant for the overplus, and the judgment shall be entered for him for that amount; and whether the judgment is for the plaintiff or the defendant, it shall carry full costs.

Plea of payment in mutual dealings.

Judgment for plaintiff.

Judgment for defendant.

SEC. 27. In any action founded upon any specialty or other contract (conveyances of real estate and instruments negotiable by the law merchant excepted,) the defendant, by special plea, may allege the want or failure of the consideration or any part thereof, of such specialty or other contract; and if any specialty or other contract (excepting as aforesaid,) is alleged in any other stage of the proceedings, the other party may aver in answer and prove on trial, the want or failure of the consideration in the whole or part, of such specialty or other contract, and whenever such specialty or other contract shall be given in evidence, without being pleaded, the other party may (excepting as aforesaid) prove the want or failure of the consideration or part thereof, of such specialty or other contract.

Consideration, failure of, may be pleaded.

SEC. 28. The pleadings may be made up at any time be-

Pleadings,
when to be
made up.

Judgment for
failure to
plead, &c.

Time to plead

Amendment
of pleading.

Continuance
for amend-
ment.

Continuance
for other
cause.
Interlocutory
judgment.
May be set
aside.

Non-suit or
continuance
for laches.

Time of filing
pleading to be
endorsed.

Demurrer.

fore the calling of the cause, and no rule to declare, plead, &c. shall be necessary; but when the cause is called, if the plea or pleas have not been filed, the defendant shall plead, the plaintiff reply, and the defendant rejoin, and so on until the issues in law or fact be made up, and a trial shall be thereupon had; and if either party shall fail to file his part of the pleadings, the court may enter judgment against him for such failure, unless for good cause shewn, they give him a further day in that or the succeeding term, to file such pleading, on the payment of the costs occasioned by the postponement; and if from any cause, the issue is not made up in the time herein prescribed, or that may be prescribed by the court, the court shall have the same power at each subsequent calling of the cause, to compel the completion of the issues.

SEC. 29. The court may give leave to amend the declaration or other pleadings, according to the former usages of courts, at the costs of the party amending; but such amendment shall be filed immediately, unless the court, for good cause, give further day; if the amendment is in matter of form, the trial shall not thereby be delayed, if it be in matter of substance, the other party may immediately answer thereto, whereupon the cause shall proceed, as if no amendment had been made, or he may at his election, demand a continuance of the cause until the next term; if the plaintiff amends his declaration, the defendant may immediately demur thereto for special cause, but if he demands a continuance, he shall not be afterwards permitted to file any special demurrer or dilatory plea, to the amended declaration; the court for good cause shewn may continue the cause at any stage of the proceedings, at the costs of the applicant.

SEC. 30. When the plaintiff might take an interlocutory judgment, but fails to do so, the defendant may file any plea to the merits of the action. And after interlocutory judgment, and before the writ of inquiry is executed, the court may in their discretion, set aside the interlocutory judgment, and give the defendant leave to file a plea to the merits; but in either of these cases, the plaintiff may have his right of trial and continuance of the cause.

SEC. 31. If on the calling of the cause, the plaintiff fails to prosecute, and the defendant fails to appear, the court may either enter a non-suit against the plaintiff, or continue the cause.

SEC. 32. The clerk shall endorse on all pleas and pleadings, the time they were filed, and note the filing in the order book.

SEC. 33. When a demurrer is joined in any action, the court shall not regard any other defect in the writ, return, declaration or other pleadings, but what shall be specially alleged in the demurrer, as cause thereof, unless something

shall be omitted, so essential to the action or defence, that judgment according to law and the right of the case, cannot be given.

SEC. 34. After issue joined in ejectment, on the title only, no exception of form or substance, shall be taken to the declaration.

No formal exception in ejectment after issue.

SEC. 35. Every charge of incest, fornication, adultery or whoredom, made by any person against any female, shall be actionable, and subject to the same rules and regulations it would be, if the charge were of a criminal nature, the commission of which would subject the offender to death or degrading pains and penalties. And any words falsely spoken of and concerning any person in this state, charging such person with incest, sodomy, buggery, bestiality or the infamous crime against nature, either with mankind or any of the brute creation, shall be in themselves actionable, and no person complaining of the speaking of any such words, shall be held to prove special damages.

Charge of adultery, &c. actionable.

Charge of incest, sodomy, &c.

Special damage need not be proved.

SEC. 36. All deeds, bonds, powers of attorney for the conveyance of real estate, shall be executed with a seal, either of wax, wafer or ink, otherwise called a scrawl, and all other instruments of writing, to which by law or the agreement of the parties, a seal is necessary, may be sealed by either of those methods, and each shall have the same effect in law; except where an act of assembly shall require a specific seal to any particular instrument of writing.

Deeds, &c. to be executed with a seal.

SEC. 37. No negro, mulatto or indian, shall be a witness, except in pleas of the state against negroes, mulattoes or indians, and in civil cases where negroes, mulattoes or indians alone are parties. Every person other than a negro, having one fourth part or more of negro blood, or any one of whose grandfathers or grandmothers shall have been a negro, shall be deemed a mulatto.

When negro, mulatto, &c. may be a witness.

SEC. 38. Each and every justice of the peace in this state, by virtue of his office, is hereby invested with full power to take depositions, in suits at law and in chancery, without a *dedimus potestatem*, and one justice shall be sufficient for that purpose, whose official certificate shall be a sufficient authentication; and when a *dedimus potestatem* shall issue from any court in this state, directed to any justice of the peace in any other state, authorizing him to take depositions, to be read in evidence in any suit depending in said court, the certificate of such justice, officially certifying the taking of the same, shall be a sufficient authentication.

Depositions taken by a J. P. in this state how authenticated.

Depositions taken by a J. P. of another state, how authenticated.

SEC. 39. When a witness resides without the state, his deposition may be taken (without previously filing an affidavit in the clerk's office for that purpose) and read in evidence in any suit, and the clerks of the several circuit courts in this state, may issue a *dedimus potestatem* for that purpose, with-

Dedimus may issue without affidavit.

Affidavit,
when necessary,
and deposition
de bene esse.

out an affidavit or order of court: and whenever it shall appear by affidavit, that a witness is not a resident of, or is about to leave the state, or is unable by age, sickness or otherwise to attend the court, or where the claim or defence of any party, or a material part thereof, depends on a single witness, the circuit court in term time, or the clerk in vacation, may issue a commission for taking the deposition of such witness, to be read in evidence on the trial of the cause, in case the witness shall be unable to attend; the party taking the same, giving due notice to the opposite party.

Notices, to
whom given.

SEC. 40. All notices required by this act, shall be given to the party, his agent or attorney at law, if either of them resides within this state, and may be served by the sheriff or other officer of the proper county; but if neither the party, his agent or attorney resides in the state, the notice may be filed in the clerk's office, where the suit is depending, or published three weeks successively in some public newspaper.

Judgment by
the court
without a
jury.

SEC. 41. In all cases of judgment on demurrer, by *nihil dicit*, or default, where the matter charged in the pleadings, depends upon calculation, or can be reduced to certainty, the court may give judgment for the debt or damages to which the party is entitled, or either party may demand a jury to enquire of such debt or damages; and when the parties in any suit, civil or criminal, shall by agreement submit any matter to the determination of the court, they may hear and determine the same without a jury, and give judgment as in other cases.

Challenge to
jury.

Jury de med.
linguae.

SEC. 42. In all actions that may be tried in any court of record, each party shall have the right of peremptory challenge to three jurors, and juries *de medietate linguae*, may be empannelled whenever necessary.

Elizors.

SEC. 43. The several circuit courts shall have full power and authority, to appoint elisors to serve and execute all manner of writs issuing out of their respective courts, in cases wherein the sheriff and coroner of the proper county are both parties or are interested, and each elisor when so appointed, shall take the same oath, and give like bond before he enters on the duties of his office, that sheriffs have to take and give; and after such elisor shall be sworn, he shall then have the same authority to execute such writ or writs, to the service of which he may be appointed, as the sheriff would have had, and shall be liable to the same penalties and be governed in all respects by the same rules and restrictions, that sheriffs are bound by in similar cases.

Elisor's oath,
bond and du-
ties.

Interpreters.

SEC. 44. Interpreters may be sworn to interpret truly, whenever necessary.

Non-suit be-
fore jury re-
tire.

SEC. 45. Every person desirous of suffering a non-suit, shall be barred therefrom, unless it be done before the jury retire from the bar.

SEC. 46. When there are several counts, one of which is faulty, and entire damages are given, the verdict shall be good, but the defendant may apply to the court to instruct the jury to disregard such faulty count.

Faulty counts to be disregarded.

SEC. 47. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

SEC. 48. If verdict in detinue omit price or value, the court may at any time award a writ of inquiry to ascertain the same, and if on an issue concerning several things in one count in detinue, no verdict be found for part of them, the verdict shall be good, but the plaintiff shall be barred of his title to the things omitted.

After defective verdict in detinue, writ of inquiry may issue, &c.

SEC. 49. Not more than two new trials shall be granted to the same party, in the same cause: *Provided*, That the supreme and circuit courts, in the granting of new trials, shall grant the same on the payment of costs, or on the costs abiding the event of the suit, as the justice and equity of the case may require, taking into consideration the causes which may make such new trial necessary.

Not more than two new trials and terms of.

SEC. 50. In all cases against special bail, if the principal shall surrender himself or be surrendered by the bail, before judgment is given against the bail, such suit shall be dismissed at the costs of the bail, and the court shall enter an *exoneretur* on the record, and the bail shall be forever discharged. A bail piece from any sister state, duly authenticated according to the laws of the United States, shall be deemed good authority for special bail to arrest and take his principal without the state; and if the bail do not wish to take their principal without the state, a bail piece, with the county seal annexed, shall be sufficient authority.

Special bail may surrender principal.

Exoneretur.

Bail piece from another state, and its authentication.

Bail piece from another county.

SEC. 51. That whenever any sheriff in this state shall receive any writ of *capias ad respondendum* from a foreign county, to him directed, it shall be his duty to execute the same, and of his doings thereon, make due return to the court from whence the said writ shall have issued, and also deliver the body of the defendant or defendants to the jail of the county from whence said writ issued, unless such defendant or defendants shall give bail as in other cases.

Ca. sa. from another county, how executed.

SEC. 52. That in every leap year the twenty-eighth and twenty-ninth days of February shall be considered in law as one day.

Leap-year.

SEC. 53. Whenever any suit shall abate by the death of the plaintiff, his heirs, executors or administrators may revive the same, by issuing a scire facias against the defendant, and when any suit instituted by any person as executor or administrator, shall abate by the death of the plaintiff, it shall be lawful for the administrator *de bonis non*, to revive the same by issuing a scire facias against the defendant; where the suit abates before the declaration is filed, such

Suits abated by death of plaintiff, how revived.

representatives may file the same in their *rêprésentative* character, and proceed to judgment, as if the suit had been instituted by them.

Suits abated
by death of
deendant,
how revived.

Revivor vs.
administrator
de bonis non.

SEC. 54. When the defendant dies, the plaintiff may revive the suit by *scire facias* against his heirs, executors or administrators, and when any suit instituted against any person as executor or administrator, shall abate by the death of the defendant, the plaintiff may revive the same, by *scire facias* against the administrator *de bonis non*, and such representatives may appear and plead in their representative character, as if the suit had been originally against them; if there are no representatives within the jurisdiction of the court, the plaintiff on the return of the *scire facias* "not found," may take judgment against such heirs, executors or administrators, subject however to be opened at any time within seven years, by either the heirs, executors, administrators, or administrators *de bonis non*, for the purpose of admitting any set off, or equitable defence; but actions of slander and assault and battery shall not be revived.

Death of a co-
plaintiff shall
not abate suit.

SEC. 55. That if in any action, there be two or more plaintiffs or defendants, and one or more of them shall die, the action shall not be thereby abated, if the cause of such action survive, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

Feme sole,
marriage of,
after action,
shall not a-
bate suit.

SEC. 56. In all cases hereafter instituted by or against any *feme sole*, in any court of record in this state, if during the pendency of the same, any such plaintiff or defendant shall marry, said action shall not thereby abate, but upon such marriage, with the name of the husband being suggested on the record, such action shall proceed against or in favour of such husband and wife, and be determined in the same manner as if such marriage had taken place before the commencement of such suit.

Title bond
given by de-
ceased obligor
how enforced,
and proceed-
ings thereon.

SEC. 57. Whenever any person or persons who have executed or shall hereafter execute, his, her or their bond or obligation, for the conveyance of any real estate, to any person or persons, body politic or corporate, shall die intestate, or without having made the necessary provisions by will for the conveyance of such estate, it shall be lawful for the obligee or obligees in such bonds, or his, her or their assignees, to apply to the circuit court of the county in which such real estate lies, to appoint a commissioner to convey the same, in conformity with the conditions of said obligation, by a deed to be by such commissioner executed, of the same tenor and effect as the deceased obligor was bound to make in his life time: *Provided*, the person or persons making such application as aforesaid, shall first give four weeks personal

Application
to court.

Notice.

notice to the heir or heirs of such obligor or obligors, if residents of the state; and if non-residents, three months notice of such application, by advertising the same three weeks successively, in the nearest public newspaper to where the said real estate is situate; and the said commissioner shall on the first day of the term next succeeding such appointment, report his proceedings, accompanied with the original title bond or obligation; which report, bond and conveyance, shall be entered at full length, upon the records of said court, unless objections be made by the legal representatives of such deceased obligor; in which case the said conveyance shall be inoperative and of no effect, and the obligee or obligees may file his, her or their bill on the chancery side of said court, to perfect his, her or their title. The court shall order a reasonable compensation to such commissioner for his services, to be paid by the applicant: *Provided* the sums so paid, may be recovered at any time thereafter, of the legal representatives of the deceased obligor, if sufficient real or personal estate shall have descended to said representatives, by action of debt or assumpsit brought by said applicant, before any tribunal proper to try the same: *Provided also*, That no applicant shall recover any allowance made as aforesaid, from said representatives, unless the said report, bond and conveyance shall be entered on the records of said court: *Provided*, That circuit courts, exercising chancery powers, shall have concurrent jurisdiction of the several matters in this section specified.

Report of
commissioner.

No conveyance if objected to.

Compensation to commissioner.

Proviso.
Concurrent jurisdiction.

Jeofails.

SEC. 58. No judgment, after the verdict of twelve men, shall be stayed or reversed for any defect or fault in the writ original or judicial, or for a variance in the writ from the declaration or other proceedings, or for any discontinuance, misjoining of the issue, or lack of warrant of attorney, or for the appearance of either party, being under the age of twenty-one years, by attorney, if the verdict be for him and not to his prejudice, or for not alleging any deed, letters testamentary or letters of administration to be brought into court, or for the omission of the words "with force and arms," "against the peace;" or for the mistake of the given name or surname of either party, sum of money, quantity of merchandize, day, month or year, in the declaration or pleadings, the name, sum, quantity or time being right in any part of the record or proceedings, or for the omission of the averment, "this he is ready to verify," or "this he is ready to verify by the record," or for not alleging "as appears by the record," or for omitting the averment of any matter, without the proving of which the jury ought not to have given such verdict, or for not alleging that the suit or action is within the jurisdiction of the court, or for any informality in entering up the judgment by the clerk; neither shall any judgment, entered

by nihil dicit, or non sum informatus, be reversed, nor judgment after an inquiry of damages be stayed or reversed, for any omission or fault which would not have been good cause to stay or reverse the judgment, if there had been a verdict; and a judgment by confession shall be equal to a release of errors. And for the further prevention of delay, by arresting judgment, and vexatious appeals, the several acts of parliament, commonly called statutes of jeofails, which were in force in England on the seventh day of February, one thousand seven hundred and fifty-two, or so much thereof as relates to jeofails, mispleading and amendment, are hereby declared to be in full force in this state.

Proceedings
of the court,
how drawn up

SEC. 59. Each day's proceedings of the court shall be drawn up at full length by the clerk, which after being read in the presence of the court, shall be signed by the president or the two associate judges.

Execution
docket.

SEC. 60. The clerk shall enter on his execution book, every execution at the time it issues, noting in separate columns the names of the parties, the day it issues, the endorsement containing a statement of the debt, damages, interest and costs, and whether replevied or not, the return day, to whom directed, to whom delivered, the officer's return, and the day it is made, at full length, and shall make the like entries on issuing an *alias* or *pluries* execution; which book and the entries therein made as aforesaid, shall be taken as matters of record.

Subpœnas.
how issued.

SEC. 61. The clerk shall issue subpœnas on the application of either party, in all cases where the declaration has been filed and the writ issued ten days before the return day; inserting the names of all the witnesses that may be called for at the same time, in one subpœna. And it shall also be the duty of the clerk, upon application as aforesaid, to issue subpœnas for witnesses to any county within this state.

Not more than
three witnesses
to one fact.

SEC. 62. If either party litigant in any action, shall cause to be subpœnaed more than three witnesses, to prove the same identical fact, the party causing such witness or witnesses over the number of three as aforesaid, to be summoned, shall pay the whole of the costs occasioned by causing to be summoned such surplus number of witnesses as aforesaid.

Scire facias
executed as a
summons.

SEC. 63. That it shall not be necessary for any officer in executing a writ of *scire facias*, to do the same with the aid of two freeholders, but such officer may return such writ in like manner as a summons, whether the defendant or defendants in such writ be found or be not found in such officer's bailiwick.

Cause reversed
and re-
traded, not

SEC. 64. Whenever a cause is by the supreme court reversed in whole or in part, on appeal or writ of error, and sent back for such further proceedings as may require a tri-

al by a jury, no such trial in such cause shall be had at the first term thereafter, of the court in which such further proceedings are to be had, unless both parties are consenting thereto, but such decision of reversal shall be entered of record in such inferior court, and the cause continued until the following term.

to be tried
first term.

CHAPTER LXXIV.

AN Act for the safe keeping of prisoners, committed under the authority of the United States, into any of the jails of this state, and for other purposes.

[APPROVED, JANUARY 26, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be the duty of the keeper of every jail, in every county within this state, to receive into his custody, any prisoner or prisoners, who may be from time to time committed to his charge, under the authority of the United States, and to safe keep every such prisoner or prisoners, according to the warrant or precept of commitment, until he or they shall be discharged by the due course of the laws of the United States.

Jailer to receive prisoner committed under the authority of the United States.

SEC. 2. The keeper of every jail aforesaid, shall be subject to the same pains and penalties, for every neglect or failure of duty herein, as he would be subject to by the laws of this state, for the like neglect or failure in the case of a prisoner committed under the authority of the said laws.

Penalty for neglect of duty.

SEC. 3. *Provided always,* That the United States do pay or cause to be paid, for the use and keeping of such jails, at the rate of fifty cents per month, for each prisoner that shall under their authority be committed thereto, during the time such prisoner shall be therein confined, and moreover do support such of the said prisoners as shall be committed for offences.

United States to support criminals.

SEC. 4. That the marshal for the court of the United States within this state, shall have a right to use any county prison within this state, for the imprisonment of any one in his custody, by legal writ or process, in the same manner as the sheriffs of the respective counties have a right to use such prisons; and all jailers and keepers of jails within this state, are hereby directed to receive and keep such prisoners, delivered them by the marshal or his authorized deputy, in the same manner as if the prisoner were delivered him by the sheriff of the county in which his jail is fixed: *Provided however,* That all charges for keeping and feeding,

Jailer to receive prisoners from the marshal of the district.

and other incidents, shall be made by such jailer against the marshal, and not against the county.

Federal district court, where to be holden.

SEC. 5. *And be it further enacted*, That the judge of the district court for the Indiana District, shall have permission, and is hereby authorized, to hold the sessions of the said court, in the court room that is used by the supreme court of this state for the same purpose.

CHAPTER LXXV.

An Act regulating Prisons and Prison Bounds.

[APPROVED, DECEMBER 22, 1823.]

Circuit courts shall lay off prison bounds.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the several circuit courts shall lay off and designate by metes and bounds, around and adjoining each county jail, a certain determinate space of land, to be called and termed Prison Bounds; which shall not extend, in any direction from said jail, more than six hundred yards; and such bounds so fixed and assigned, shall be recorded amongst the records of said court, a copy of which shall be delivered to the jailer, to be by him fixed up, in some conspicuous place in the debtor's room, for the government of such of them as shall be entitled to the benefit of such prison bounds.

Who entitled to prison bounds.

SEC. 2. Every prisoner imprisoned for debt, either on mesne process or execution, shall be permitted and allowed the privileges and benefit of the prison bounds; but in no instance to pass over, or without said limits; but such prisoner, before he or she shall be entitled to such privileges, shall give bond with security, living within the county, to the creditor or creditors, in double the sum for which such prisoner stands committed, conditioned, that from and after the execution of such bond, he will continue a true prisoner, in the custody of the jailer or prison keeper, and within the limits of the said prison bounds, without attempting any manner of escape, until discharged by law; and the sheriff shall be liable for the solvency of the bail; but for a breach of the condition of said bond, the sheriff shall not be liable; but shall, when demanded by the creditor mentioned in the bond, deliver the same over to such creditor or creditors, who may commence suit thereon, against the obligors of the same.

Bond.

Condition thereof.

Sheriff liable, &c.

This act given in evidence in actions of escape.

SEC. 3. If any action or suit shall be brought or instituted, against any sheriff or jailer, for any manner of escape, committed by any prisoner allowed the benefit and privileges of prison bounds, having first given bond, as is by this

law required, such sheriff or jailer shall have the liberty of pleading the general issue, and of giving this act in evidence.

SEC. 4. If any person who may be committed for debt, shall violently escape from prison, without the connivance of the sheriff or keeper, and the sheriff, jailer or prison keeper, shall within three months next after such escape, recover the prisoner so escaped, and recommit him to prison, then and in that case the sheriff shall be liable to nothing further than the costs of such action or actions, as may have been commenced against him, for such escape.

Recaption of prisoners.

SEC. 5. All warrants, mittimuses, writs and instruments of writing of every kind, or the attested copies of them, by which any prisoner may be committed, enlarged or liberated, shall be safely kept (regularly filed in their order of time,) in a suitable box, for that purpose provided by the keeper of the jail, under the direction of the sheriff; and upon the death or removal of any sheriff, the box with the contents thereof shall be delivered to his successor in office, under a penalty not exceeding five hundred dollars, to be paid by the sheriff so removed, or his executors or administrators, in case of the death of the sheriff, to be recovered by any person who shall prosecute therefor to effect, in any court having jurisdiction.

Process, how kept by the jailer.

SEC. 6. It shall be the duty of the circuit courts, at the beginning of every term, to direct the grand jury to inquire into the state of the prison in their respective counties, both with regard to the sufficiency of such prison, and the condition and accommodation of the prisoners; and said courts shall from time to time, take such legal measures, as may best tend to secure the prisoners from escape, sickness and infection, and to have the jails cleansed from filth and vermin.

Grand jury to examine the prison.

SEC. 7. The sheriff shall keep separate rooms for the sexes, except where they are lawfully married, and be responsible that his jailer at all times provides proper meat and drink, for all prisoners committed to the jail of his proper county, if such prisoners have no other convenient way of supplying themselves with provisions, which shall always pass to them through the keeper's hands; and in every case where the sheriff or jailer shall be at the expense of furnishing meat, drink or fire-wood to a prisoner in jail for a crime, or at the suit of the state, who is not of ability in point of property, to repay or indemnify such sheriff or jailer their reasonable expense and charges, for supplying such prisoner or prisoners; in every such case the sheriff or jailer shall make out his account therefor, and on oath shall testify to the truth of the same, before any justice of the peace or judge of the circuit court of the proper county, and on the receipt of such certificate, the commissioners

Separate rooms for the sexes.

Compensation for keeping prisoners, how made:

of said county shall audit the same; but in all civil cases, where the defendant is unable to pay the prison fees, the same shall be taxed up by the sheriff against the plaintiff, which shall be recovered in the same manner as other costs; but nothing herein contained shall be so construed, as to prevent the prison fees being taxed up in favour of such plaintiff, and made a part of his costs against such defendant or defendants, after he shall be liberated from confinement.

CHAPTER LXXVI.

An Act defining and regulating Privileges in certain cases.

[APPROVED, DECEMBER 31, 1817.]

Privilege of
members and
officers of the
general as-
sembly.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the members of the general assembly of the state of Indiana, and the secretaries, clerks, sergeant-at-arms, door keepers and messengers of either branch of the general assembly of this state, shall be privileged from arrest during the sitting of the legislature or either branch thereof, to which they respectively belong, and also during the time necessarily employed in travelling to and returning from the place of their meeting, allowing one day for every twenty-five miles of the distance of the road most usually travelled; and all proceedings in suits pending, in which either of the persons above mentioned is a party, shall be stayed during the time aforesaid; and whoever shall arrest either of the persons above mentioned, during the time they are entitled to privilege as above provided, shall forfeit and pay for every such offence, the sum of one hundred dollars, to be recovered with costs of suit, by action of debt, for the use and in the name of the person injured; and all persons legally entitled to vote for representatives to the general assembly, shall be privileged from arrest during the time of their attendance at elections, and while on the way of going to and returning from such elections.

Of electors.

Of judges and
clerk of su-
preme court.

SEC. 2. The judges and clerk of the supreme court shall be privileged from arrest, while attending on the court and during the space of fifteen days next before the commencement, and for the space of ten days next after the close of any term thereof.

Of C. court.

SEC. 3. The judges of the several circuit courts within this state, during the sitting of their respective courts, and during the space of forty-eight hours next before the commencement, and during the like space next after the close of any term thereof, and each member of the board of coun-

ty commissioners for the space of forty-eight hours before any of their regular and legal sessions, during the time employed in said session, and for forty-eight hours after the close thereof, and the justices of the peace, while engaged in hearing and determining any action, suit or plaint, instituted before them or either of them, and all attornies and counsellors at law, clerks, sheriffs, coroners and criers, and all suitors, witnesses and jurors, while attending court, and while going to and returning from court, shall be privileged from arrest.

Of judges of circuit court and county com'rs.

Of suitors, witnesses and jurors.

Of the militia.

SEC. 4. No person shall be arrested while doing militia duty under the order of his commanding officer, or while going to or returning from the place of duty or parade, nor shall any person be arrested on the first day of the week, commonly called Sunday, nor in any place of religious worship, during the performance of divine service, or in the chamber of the legislative body of this state during their sitting, or in any court of justice during the sitting of the court, or on the fourth day of the month of July, the anniversary of American independence: *Provided however*, nothing in this act contained, shall be so construed as to prevent any person from arrest, if he shall disturb or molest any religious congregation in worship, or any individual thereof.

Proviso.

SEC. 5. Nothing herein contained shall be so construed as to extend to cases of treason, felony or breach of the peace: *Provided always*, That where either of the members or officers of the general assembly, shall be arrested during the sitting of the legislature, upon any charge of treason, felony or breach of the peace, it shall be the duty of the person issuing the process on which the arrest is made, forthwith to give written notice thereof to the house in which the person arrested shall be a member, addressed to the president or speaker, as the case may be.

Criminals not embraced in this act.

Proviso, relating to the general assembly during its session, &c.

SEC. 6. Nothing herein contained shall be construed to privilege any person herein named from being served any time, Sundays and the fourth of July excepted, with a summons or notice to appear. And all arrests, not contrary to the provisions herein contained, made in any place, on any water course or river within or bounding on this state, shall be deemed lawful. And if any person shall be arrested, contrary to the provisions herein contained, such person may and shall be discharged by a writ of habeas corpus or in a summary way, by motion before the court from which the process shall have issued, at the cost of the party suing out such process.

When summons may be served.

Person illegally arrested, how discharged.

All acts or parts of acts, heretofore in force on the foregoing subject, are hereby repealed.

CHAPTER LXXVII.

An Act defining the Duties of Recorders.

[APPROVED, JANUARY 19, 1831.]

Office of recorder established and where to be kept.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That there shall be an office of record in each and every county in this state, which shall be called and styled the recorder's office, and shall be kept at some convenient place at the seat of justice, in the respective counties, and the recorders shall duly attend the service of the same, and at the costs and charges of the proper county, shall provide good large books, of royal or other large paper or parchment, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this law.

Recorder's bond.

SEC. 2. Before any recorder enters upon the duties of his office, he shall give bond to the state of Indiana, in the sum of two thousand dollars, with one or more securities, to be taken and approved by the associate judges of the proper county, conditioned for the faithful discharge of his duties, and for the preservation and safe keeping of the records and other writings belonging to his office, and for the delivery of the same to his successor in office, whole and undefaced; which bond shall be forwarded by said judges to the office of the secretary of state, to be by him filed and preserved, for the benefit of any person who may be injured by any neglect or improper conduct of said recorder, in the discharge of his official duties.

For whose benefit.

Penalty for acting before bond is given.

SEC. 3. No recorder now or hereafter appointed, shall enter upon the duties of, or officiate in his said office, before he has given such security as aforesaid, upon the pain of forfeiting three hundred dollars, one half to the proper county, and the other half to him or them that shall sue for the same, to be recovered as is provided in the fourth section of this act.

Recorder to have respect to priority of time in recording.

SEC. 4. Every recorder shall keep a fair book, in which he shall immediately make an entry of every deed or writing brought into his office for recording, mentioning therein the date, the parties and the place, where the lands, tenements and hereditaments, granted or conveyed by the said deed or writing are situate, dating the same entry on the day on which such deed or writing was brought into his office, and shall record all such deeds and writings, in regular succession, according to their priority or time in being brought into said office, and shall also immediately give a receipt to the person bringing such deed or writing to be recorded, if requested, bearing date on the same day with

To give receipt for deeds &c.

the entry, and containing the abstract aforesaid, for which entry or receipt he shall take or receive no fee or reward whatever; and if any recorder shall record any deed or writing, before another first brought into his office to be recorded, or in any other manner than is herein before directed, or shall directly or indirectly take or receive any fee or reward for such entry and receipt, or either of them, he shall forfeit and pay for every such offence, a sum not exceeding three hundred nor less than one hundred dollars, to the use of the proper county, to be recovered in any court of record by action of debt, bill or plaint.

Penalty for violation of duty.

SEC. 5. It shall be the duty of each and every recorder in this state, to make a complete index of all deeds and instruments in writing, which have been or may hereafter be recorded in his office, to be prefixed or annexed to the volume containing the deed or instrument therein referred to, in manner following, to wit: The name of each grantor, promisor or covenantor shall be set down in alphabetical order, referring to the particular grantee, promisee or covenantee; and also the name of each grantee, promisee or covenantee, shall be set down in alphabetical order, referring to the proper grantor, promisor or covenantor, so that any person hereafter, by knowing the name of one of the parties to any deed or instrument recorded, may without delay, be referred to the same on the record.

Shall make index and cross index of deeds, &c.

SEC. 6. The same powers which are now given by any law or laws of this state, to the clerks of the circuit courts, to appoint deputies, are hereby extended to recorders: *Provided*, That each and every recorder be responsible for the acts of his deputy.

May appoint deputy.

SEC. 7. It shall be the duty of the several recorders in this state, to record all town plats, by transcribing the same in a book for their better preservation, in all counties where such has not heretofore been the practice, and all bonds and other writings which shall be brought to him duly authenticated.

Shall record, town plats, bonds, &c.

SEC. 8. Every recorder who shall fail to comply with the requisitions of this act, shall be liable to the penalties provided in the fourth section of this act.

Penalty for neglect of duty.

CHAPTER LXXVIII.

An Act for rendering Authentic as evidence in the Courts of this State, the Public Acts, Records and Judicial Proceedings of Courts of the United States.

[APPROVED, JANUARY 10, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every act of the legislature of any one of

How legislative acts shall be certified.

the United States, or any of the territories of the United States, certified by the secretary, and having the seal of such state or territory affixed thereto, shall be deemed authentic, and receive full faith and credit, when offered in evidence, in any court of justice within this state.

How judicial proceedings shall be certified.

SEC. 2. The records and judicial proceeding of the several courts of or within the United States, or the territories thereof, shall be admitted in the courts of justice in this state, by the attestation or certificate of the clerk or prothonotary and the seal of the court annexed, together with the certificate of the chief justice or one or more of the judges or the presiding magistrate of either such court, as the case may be, that the person who signed such attestation or certificate, was at the time of subscribing it, the clerk or prothonotary of such court, and that such attestation is in due form of law; and the said records and judicial proceedings, authenticated as aforesaid, shall have full faith and credit given to them, in any court within this state, as by law or usage they have in the courts of the United States, or any one of the states or territories, whence the said records are or shall be taken.

SEC. 3. This act to be in force from and after its publication.

CHAPTER LXXIX.

An Act regulating Distress for Rent.

[APPROVED, FEBRUARY 1, 1831.]

Distress how made, and warrant how obtained.

Oath and its requisites.

Tenant may replevy in five days.

Notice of distress to be given.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be lawful for any landlord, his, her or their agent or attorney, to make distress for rent, by virtue of this act, by obtaining a warrant from some justice of the peace within the proper township, where such distress shall be made, directed to some constable of said township, to be issued on complaint upon oath, describing the premises for which such rent shall or may be claimed as due and in arrear, in what payable, when due, and the amount thereof; and that he is fearful he will lose his rent by attempting to collect it as other debts are collected.

SEC. 2. That when any goods or chattels shall be distrained for rent, and the tenant or owner of the goods so distrained, shall not within five days after such distress taken and notice thereof, with the cause of such taking, shall have been left at the dwelling-house, or other most notorious place on the premises charged with the rent distrained for,

replevy the same with sufficient security, as is provided for in the act regulating the action of replevin, then and in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining, or his agent duly authorized, shall and may, with the constable executing such warrant, cause the goods and chattels so distrained, to be appraised by two reputable householders, who shall have and receive for their trouble the sum of fifty cents per day each, and shall first take the oath or affirmation following: "I A. B. will well and truly, according to the best of my understanding, appraise the goods and chattels of C. D. distrained on for rent by E. F.," which oath or affirmation, such constable executing such warrant is hereby empowered and required to administer; and after such appraisement, shall and may, after ten days public notice, lawfully sell the goods and chattels so distrained, for the best price that can be got for the same, for and towards satisfaction for the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hands of the said constable executing such warrant, for the owner's use.

Appraisement
after five days

Appraiser's
oath.

Sale of goods
after ten days
notice.

SEC. 3. That upon any pound breach, or rescue of goods and chattels distrained for rent, the person or persons aggrieved thereby, shall in a special action on the case for the wrong sustained thereby, recover treble damages and costs of suit, against the offender or offenders in such pound breach or rescue, or any or either of them, or against the owner or owners of the goods distrained, in case the same be afterwards found to have come to his or their use or possession. No property distrained shall be driven out of the county in which it was taken, and such removal shall be considered a trespass; and if committed by a landlord on the property of his tenant, shall be punished by exemplary damages, in an action of trespass *quare clausum fregit*: distresses shall be reasonable, and he that takes great and unreasonable distress, shall be punished in the same manner, as for driving property so taken out of the county.

Rescue of
goods, how
punished.

Distress not to
be driven out
of county.

Distress shall
be reasonable.

SEC. 4. That in case any distress and sale shall be made by virtue of this act, for rent pretended to be in arrear and due, when in truth no rent shall appear to be in arrear or due to the person or persons distraining, or him, her or them in whose name or names or right, such distress shall be taken as aforesaid, then the owner of such goods and chattels distrained and sold as aforesaid, his, her or their executors or administrators, shall and may by action of trespass on the case, to be brought against the person or persons so distraining, any or either of them, his, her or their executors or administrators, recover double the value of the

Penalty for
distraining &
selling where
no rent is due.

goods and chattels so distrained and sold, together with full costs of suit.

Landlord's
lien on prop-
erty on the
premises, tak-
en on execu-
tion.

Officer to pay
over money to
landlord.

Not more than
one year's
rent.

Landlord
shall first
prove his
claim before
J. P.
Notice of
claim.

Notice of
proving claim

Justice's cer-
tificate to offi-
cer, of proof of
claim.

On appeal,
officer shall
hold money.

Second dis-
tress authoriz-
ed.

Goods remov-
ed to avoid
distress, shall
be liable
wherever, &c.

SEC. 5. The goods and chattels of any tenant, lying and being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years or otherwise, taken by virtue of any execution, shall be liable for the payment of all such sum or sums of money, as are or shall be due from such tenant for rent of the premises, at the time of taking such goods and chattels, by virtue of such execution, and the said sheriff or other officer, shall, after sale of the said goods and chattels, pay to the landlord or other person empowered to receive the same, such rent so due, if so much shall remain in his hands, and apply the overplus thereof, if any, towards satisfying the debt and costs, in such execution mentioned: *Provided*, That said rent so to be paid to the landlord, shall not exceed one year's rent: *Provided further*, That before such payment be made by the sheriff or other officer to the said landlord, such landlord shall prove his claim before a justice of the peace of the proper county, and such sheriff or other officer, shall after having received notice of such claim, withhold the payment of the money so collected, until such landlord shall have had an opportunity to prove such claim, for a term of time not exceeding thirty days; and such execution plaintiff, his agent or attorney, shall have six days notice of the time and place of making such proof, if such execution plaintiff, his agent or attorney, shall reside within the county, but if such execution plaintiff, his agent or attorney does not reside in the county, then notice of the time and place of making such proof, shall be left with the sheriff or other officer who may have such execution in his hands, and a certificate from such justice, that due proof of such claim has been made by such landlord, shall be sufficient authority for such sheriff or other officer to pay the amount, not exceeding one year's rent, so proven as aforesaid, to such landlord; and in all cases of appeal from the decision of any such justice, the sheriff or other officer shall hold such monies in his hands until the determination of said suit.

SEC. 6. In all cases aforesaid, where the value of the goods distrained shall not be found to be the full value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators, may from time to time, distrain again for the residue of said arrears.

SEC. 7. In case any lessee or tenant of any messuage, lands or tenements, upon the demise whereof any rents are or shall be reserved or made payable, shall fraudulently or clandestinely, convey or carry off from such demised premises, his goods or chattels, with a view to prevent the landlord or lessor from distraining the same for arrears of such

rent, so reserved as aforesaid, it shall and may be lawful, to and for such landlord or lessor, or any other person or persons by him for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same may be found, as a distress for the said arrears of rent, and the same to sell or otherwise dispose of, in the same manner as if such goods and chattels had actually been distrained by such lessor or landlord, in or upon such demised premises, for such arrears of rent: *Provided*, That nothing herein contained, shall empower such landlord or lessor, to take or seize any such goods or chattels as a distress for arrears of rent, which shall be *bona fide*, and for a valuable consideration, sold before such seizure made, to any person or persons not privy to such fraud as aforesaid.

Unless bona fide sold before seizure.

SEC. 8. It shall and may be lawful to and for every lessor or lessors, landlord or landlords, or their bailiffs, receivers or other person empowered by him, her or them to take and seize as a distress for arrears of rent, any cattle or stock of their respective tenants, feeding, pasturing or being upon all or any part of the premises demised or holden, and also to take and seize all sorts of corn, grass, hops, roots, pulse or other product whatever, which shall be growing on any part of the estate or estates so demised or holden, as a distress for arrears of rent; and to appraise, sell or otherwise dispose of the same, towards satisfaction of the rent, for which such distress shall have been taken, and of the charges of such distress, appraisement and sale, in the same manner as other goods and chattels may be seized, distrained and disposed of; and the purchaser of any such corn, grass, hops, roots, pulse or other product, shall have free ingress, egress and regress, to and from the same where growing, to repair the fences from time to time, and when ripe, to cut, gather, make, cure, lay up and thresh, and after, to carry the same away, in the same manner as the tenant might legally have done, had such distress never been made.

Lessor may distrain cattle and corn, &c. growing.

SEC. 9. That if any person or persons, other than the tenant, shall claim any property which may be distrained under the provisions of this act, such claimant shall have a trial of the right of property, under such restrictions and regulations as are provided for the trial of the right of property taken under execution.

Claim of property distrained, how tried.

SEC. 10. In all cases of distress for rent, if the tenant will within ten days after distress made, confess judgment in favour of the landlord, for the amount of rent due, before some justice of the peace, and give good security for the payment thereof, to be approved by the justice as other judgments are stayed, and pay the costs of the distress.

Distress may be discharged by confession and replevying judgment.

- the property distrained shall be forthwith discharged.
- Distress after lessor's term.** SEC. 11. It shall and may be lawful for any person or persons having any rent in arrear or due, upon lease for life or lives, or for one or more years, or at will, ended and determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined: *Provided*, That such distress be made during the continuance of such lessor's title or interest.
- Property exempt from distress.** SEC. 12. That the provisions of the law, exempting certain property from levy and sale under execution, be and the same are hereby extended to all cases of distress warrants.
- Remedy for use and occupation.** SEC. 13. Where any person or persons may have had the use and occupation of any lands, tenements or hereditaments, in any other manner than by express contract, the reasonable value of such use or occupation, may be recovered from him, her or them, by the party equitably entitled to the same, in an action of assumpsit, before any court of competent jurisdiction.

CHAPTER LXXX.

An Act regulating the Action of Replevin.

[APPROVED, JANUARY 20, 1831.]

- Jurisdiction of C. court in replevin.** SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the several circuit courts within this state, be and they are hereby invested with jurisdiction to issue writs of replevin, in the manner, and in such cases as are hereinafter prescribed.
- Causes of replevin.** SEC. 2. Whenever hereafter any person or persons, shall tortiously take, and unjustly and unlawfully detain, or lawfully acquire and unjustly and unlawfully detain, any of the personal goods and chattels of any other person or persons whomsoever, such person or persons so aggrieved, may replevy his, her or their property so taken and detained as aforesaid.
- Affidavit.** SEC. 3. Before any person or persons shall be entitled to the benefit of said writ, such person or persons, his, her or their agent or attorney, shall file in the clerk's office from which said writ issues, an affidavit made before the clerk of the circuit court, or some officer authorized to administer oaths, that the goods and chattels which he, she or they wish to replevy, are unjustly and unlawfully detained by such defendant or defendants, naming him, her or them, from the plaintiffs, naming him, her or them.

SEC. 4. When such affidavit is made and filed as aforesaid, the clerk in whose office it is deposited, shall forthwith issue a writ of replevin, directed to the proper officer of the county, commanding him to take into his custody the particular goods and chattels described in said affidavit, and them safely keep until said plaintiff or plaintiffs shall well and truly satisfy him by good and sufficient pledges, that he, she or they will well and truly prosecute said writ to effect, and return such goods and chattels, provided a return on the final hearing of the cause, should be adjudged by the court, to the defendant or defendants.

Clerk shall issue writ, and mandate thereof.

SEC. 5. The sheriff or other officer to whom the aforesaid writ shall be directed, before he delivers the goods and chattels taken by virtue of the same, to the plaintiff or plaintiffs in such writ, shall take from him, her or them, a penal bond, in double the value of the property replevied, with security to the acceptance of said sheriff or other officer, and in his own name, conditioned for prosecuting such suit with effect and without delay, and for duly returning said goods and chattels, in case a return thereof should be awarded. And the said sheriff, or other officer taking such bond, shall at the request of the defendant, assign said bond to said defendant; and if said bond be forfeited, the said defendant may bring an action thereon in his own name, as such assignee, and shall recover such sum as shall be just and equitable; and if the plaintiff shall recover, he shall in like manner recover damages for the detention of such goods and chattels, to be determined by the jury who try the cause, or by one to be empannelled for that purpose.

Sheriff shall take from plaintiff, bond to prosecute and return goods, &c.

Sheriff shall assign bond to defendant and action thereon if forfeited.

Damages.

SEC. 6. After the sheriff or other officer has replevied any goods or chattels by virtue of this act, if the person or persons so replevying the same, shall fail or refuse to give bond as by this act required, within twenty-four hours, such officer shall immediately thereafter return said goods and chattels, to such defendant or person from whose custody they were taken, and take his; her or their receipt for the same.

If bond be not given to sheriff, he shall return the goods.

SEC. 7. Whosoever any plaintiff in replevin shall be non suit, or have judgment against him on demurrer, before issue joined, the defendant making a suggestion in the nature of an avowry or cognizance for rent, to inform the court of the cause of distress, the court upon his prayer, shall direct an inquiry by jury, touching the sum in arrear at the time of such distress taken, and the value of the goods and chattels distrained; and upon such inquisition the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the goods and chattels distrained shall amount to that value; and in case they shall not amount to that value, then so much as the value of such

In a case of non-suit, &c. before issue, defendant may have jury & to find the amount due & the value of the goods.

Judgment for defendant for amount due, or the value of the goods.

If there be a non-suit or verdict after issue, vs. plaintiff, jury shall assess value of goods as before and judgments as before.

Defendant may avow generally, for rent.

Judgment vs. plaintiff in case of distress for rent, shall carry double costs.

Writ shall not extend to execution defendant.

goods and chattels so distrained shall amount to, together with his full costs of suit, and shall have execution thereupon, as in other cases; and in case such plaintiff shall be non-suit, after cognizance or avowry made and issue joined, or if the verdict shall be given against such plaintiff, or if judgment shall be given against such plaintiff upon demurrer, then the jury empannelled, or one to be empannelled, shall inquire concerning the sum of the arrears and the value of the goods or chattels distrained; and thereupon the avowant or he that makes cognizance, shall have judgment for such arrearages, or so much thereof as the goods or chattels distrained amount to, together with his full costs of suit, and shall have execution for the same as in other cases.

SEC. 8. It shall be lawful for all defendants in replevin, in case of distress for rent, to avow and make cognizance generally, that the plaintiff in replevin, or other tenant of the lands whereon such distress was made, enjoyed the same under a grant or demise, at such a certain rent or service, during the time wherein the rent or service distrained for accrued, which rent or service was then and still remains due, without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors; and if the plaintiff or plaintiffs in such action in case of distress for rent, shall become non-suit, discontinue his, her or their action, or have judgment given against him, her or them, the defendant or defendants in such replevin shall recover double costs of suit.

SEC. 9. Nothing herein contained shall be so construed as to extend the privilege of said writ, to any execution defendant or defendants, to replevy property taken by virtue of such execution, by any officer of this state.

CHAPTER LXXXI.

An Act for Assessing and Collecting the Revenue.

[APPROVED, FEBRUARY 10, 1831.]

State revenue
objects of.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That for the purpose of raising a state revenue, there shall annually be charged on lands subject to the jurisdiction of this state, except those exempted from taxation by compact with the United States, and the lands of any literary, benevolent, or religious society or corporation, which are hereby declared exempt from taxation, at the rate of eighty cents on each hundred acres of first-rate land, sixty cents on each hundred acres of second-rate land, and

forty cents on each hundred acres of third-rate land; the rates to be ascertained by the comparative quality of land in the county in which it is situate, its local advantages from contiguity to towns, navigable waters or public roads, and by the quality of the greater portion of the tract to be assessed; on every hundred dollars of stock in any bank, twenty-five cents; and on each male inhabitant between twenty-one and sixty years of age, who is sane and not a pauper, thirty-seven and a half cents: *Provided however*, that the board doing county business shall have discretionary power to exempt any person over the age of fifty years, from the payment of a poll tax, who is unable to pay the same, or on account of bodily disability.

County board
may exempt
those unable
to pay.

SEC. 2. That for the purpose of raising a revenue for county purposes, the board doing county business shall levy such taxes on land, town lots and out-lots, without the improvements thereon, on horses, asses and mules over the age of three years and not less than ten dollars in value—on covering-horses and jack asses, not exceeding the price at which the same are let for the season—on pleasure carriages—on work oxen, over three years of age—on brass clocks—on gold, silver and composition watches, not exceeding fifty cents each, as they shall deem expedient, gradually to pay the county debt, if any exist, and defray the necessary county expenses. On each tavern license, not less than five, nor more than twenty-five dollars—on each license for retailing spiritous liquors and foreign and domestic groceries, not less than the lowest amount fixed for tavern licenses in the county—on each license to vend foreign merchandize, not less than ten nor more than forty dollars—on each license to vend wooden clocks in the county, not less than nor more than ten dollars—on each ferry, not less than two nor more than twenty dollars; and the board doing county business in the several counties in the state, may in their discretion, assess a poll tax for county purposes, not exceeding fifty cents, on each individual chargeable with a poll tax for state purposes: *Provided however*, that the real and personal property of any literary, benevolent or religious society or corporation, and the personal property of a widow and orphan children, if it does not exceed two hundred dollars in value, shall be exempt from taxation: *And provided also*, that all persons who have served in the land or naval service of the United States, during the revolutionary war, be and they are hereby exempt from the payment of a poll tax and a tax upon personal property: *Provided*, that each revolutionary soldier, before he shall be entitled to the benefit of this act, shall produce to the lister of taxable property, or the collector of taxes for the county or township where he resides, an affi

County revenue, objects of

Exemptions
in favour of
societies and
corporations.

In favour of
revolutionary
soldiers.

davit sworn to before some justice of the peace in said county or township, setting forth that he has served in the land or naval service of the United States during the revolutionary war, three months or upwards; for the taking of which affidavit, the justice shall not be entitled to receive any fee or compensation whatever.

Assessors to be appointed by county board, and their oath and bond.

SEC. 3. The board doing county business shall, at their session in January in each year, appoint one or more assessors, who, within ten days after their appointment, of which they shall be notified by a summons to be issued by the clerk and served by the sheriff, shall enter into bond with security to be approved by the clerk, in his office, in the penalty of three hundred dollars, conditioned for the faithful performance of his duties as assessor; and also take an oath or affirmation, to be administered by said clerk, well, truly, and faithfully to discharge the duties required of him by law.

Penalty on assessor for refusing to act.

SEC. 4. If any assessor appointed under the provisions of this act, shall refuse to accept of such appointment, within five days after he shall have received notice thereof, he shall forfeit and pay to the county, the sum of twenty-five dollars, to be recovered by action of debt, to be prosecuted by and in the name of the county treasurer; and the clerk of the circuit court, shall, upon failure of any assessor to attend at his office and qualify as herein before directed, issue a summons directed to the members of the board doing county business, to be served by the sheriff without delay, commanding them to meet on a day named by the clerk, at the court house in the county, and appoint an assessor in the place of the one so refusing; and when so convened, the board shall appoint another, who shall forthwith appear at the office of the clerk and qualify as herein before provided. And should any assessor die, or become unable from bodily infirmity or any other cause to complete the assessment of his county, township or district, according to the provisions of this act, upon information thereof to the clerk aforesaid, a like summons as above mentioned, shall be by him issued, and the appointment and qualification thereupon made, and such last mentioned assessor shall demand and receive the assessment roll of his predecessor, of the person in whose possession it may be, and proceed to complete the assessment of taxable property and polls, according to the provisions of this act; and if the roll of his predecessor cannot be obtained, the clerk, on application, shall make out a new form.

Clerk shall summon c'ty. board, who shall appoint another.

How assessment shall be completed where assessor may die, &c.

Assessment to be commenced immediately, and how to be made.

SEC. 5. Immediately after appointment and qualification, each assessor shall commence listing the persons and assessing the property subject to taxation within his township, district or county, and on or before the first Monday in May thereafter, shall complete a full assessment roll of persons,

lands, town lots and chattels, taxable in his district, or that will be subject to taxation on the first day of May next ensuing his appointment, which roll shall contain the names of the persons chargeable, in alphabetical order, the description, number of acres and rate, whether first, second or third, of the lands; the description and value of the town lots, estimated without reference to the improvements thereon, and all other property specifically chargeable with tax for state or county purposes. The lands shall be designated by the numbers and description as laid down on the plan or map of the original surveys, and the town lots by their number and description as laid down on the plan of said town, or by the boundaries, if no other specific description can be obtained: and all lots in towns or villages, the plats or plans of which have not been recorded, shall be taxed in the same manner that lots are in towns or villages whose plats or plans have been recorded. And all tracts and lots of land owned by non-residents, or persons unknown, and where no specific description is furnished by the owner or claimant, shall be described by their least sub-divisions as known or designated on the map or plan deposited in the office of the clerk, or any other public office, or which are generally recognized as containing a correct representation of the same, by their numbers or other specific description, and as the property of persons unknown and non-resident. The rates of the land shall be determined as prescribed in the first section of this act; and in estimating the value of town lots, the assessor shall take to his assistance, two discreet persons. And should any person feel aggrieved by the rate which may be fixed on his land by the assessor, or by the value at which the appraisers estimated his town lot, he may produce evidence before the board doing county business, and if they think the rate or value too high, they shall order the clerk to alter it accordingly.

Description
of lands, &c.

Two assistants in assessing town lots.

County board may correct assessment list

SEC. 6. The clerk of each county shall prepare blank forms of assessment rolls, under this act, and deliver one to each of the assessors of his county, at the time of his qualifying, and whensoever the auditor of public accounts shall deem it requisite, he shall transmit to each of the said clerks, instructions relative to said forms.

Clerk shall prepare blank forms.

Auditor may instruct as to forms.

SEC. 7. On the last Monday in April, the assessor or assessors shall attend at the office of the clerk of the county, and with the assistance of said clerk, shall publicly, in order that all persons interested may have the necessary corrections made, and if more than one assessor has been appointed, compare their several rolls with each other and with the rolls of the preceding years, and correct all double or imperfect listing, or errors in rates, descriptions or quantity of lands or lots, and shall also compare said assessment roll or

When assessor shall make return, compare and correct his roll, &c.

Uncertain descriptions,
how aided.

rolls, with the description, catalogue and map made out by the auditor of public accounts, and if it shall appear that there are omissions or lands taxable not entered by the assessor on his roll, the clerk and assessor shall correct all such omissions and enter upon the roll, lands so omitted, as non-resident lands. And if the entry of any tract of land or lot, cannot be rendered certain in its description by the before mentioned examinations, such entry shall be rejected from the roll, and the assessor shall within five days thereafter, return to the clerk a correct description of such land or lot, and the clerk shall thereby amend the defective entry in said roll. And if the assessor or assessors should fail to attend at the time and place required, the roll when returned, shall be compared, corrected and completed as herein required; and for such failure the assessor shall be liable under this act for a violation of his duty.

Assessment to
be laid before
county board
and approved

SEC. 8. After the clerk and assessor shall have corrected the assessment roll as aforesaid, the same shall be laid before the board doing county business, and if it is found to contain all the taxable land in said county, and is otherwise correct, the board shall accept it in writing, on the back thereof, signed by their president, and the clerk shall file the same in his office where it shall remain unalterable as a matter of record, and shall be a guide to future assessors as far as the same may remain correct; but the assessment roll shall every year be corrected in the manner named in the preceding section of this act, before such roll shall be accepted and filed as aforesaid.

Assessment
roll to be annually
corrected.

Transfers of
real estate to
be noted on
the roll.

SEC. 9. In all transfers of real estate, made after the taking effect of this act, it shall be the duty of the purchaser at the time he gets his deed recorded, to have his name entered on the assessment roll by the clerk, in the place of the grantor and the assessors appointed by authority of this act; shall leave a sufficient blank space on each page of his [their] roll for subsequent entries of the kind.

Omitted lands
to be assessed
after years.

SEC. 10. Whenever any assessor shall discover, during the time he is making his assessment, that there are tracts of land, town lots, polls or chattels subject to taxation in his county or district, which were liable to taxation and omitted by the assessor in one or more preceding years, he shall enter the same upon his roll, noting distinctly the years in which such omissions were made, in the same manner as the assessments for the current year; but no such assessments shall be made for a longer period than three years back, and such assessment shall have the like force and effect as assessments made at the proper time, and the tax due thereon, charged and collected with the revenue of the year in which such assessment is made; and land and town

lots shall be subject to the tax omitted to be assessed as aforesaid, in whose hands soever they may come.

SEC. 11. For the purpose of aiding future assessors in making assessments under this act, the first assessor shall make out and retain in his possession, a duplicate of his assessment roll, and shall make the necessary corrections thereof, from time to time, so that it correspond with the assessment roll returned by him into the office of the clerk; and when he is succeeded in his office, he shall deliver the same, with all other documents in his possession relating to said office, to his successor.

First assessor shall make a duplicate and hand over to his successor.

SEC. 12. The boards doing county business, shall allow to the assessor or assessors in their respective counties, such compensation as to them shall seem just and reasonable, to be paid out of the treasury of the proper county, on the order of said board as other monies are paid; and at the time the collector of the county makes return of the amount of taxes collected by him off unassessed persons or property as hereinafter provided, the said board shall make an order, deducting such sum as to them may seem most reasonable, for failing to assess such persons and property, from the allowance made to such assessor for his services; and if such assessor shall have received his pay for assessing, he and his securities shall be liable on their bond for the amount of such deduction.

Assessor's compensation

Board may deduct from assessor's compensation

SEC. 13. The board doing county business, for the purpose of enabling the clerk to calculate and carry out the amount of tax on all property and polls returned by the assessor, shall during the session at which the appointment of assessor is made, determine under the restrictions of the second section of this act, the rates of taxation upon the several subjects allowed to be taxed for county revenue, and enter such determination of record, which shall govern the clerk in making the said calculations.

Board shall fix rates of assessment at the term of appointing assessor.

SEC. 14. Immediately after the return, perfection, acceptance and filing of the assessment roll, as herein before directed, the clerk shall calculate and carry out the amount of taxes, distinguishing in separate columns between those for state and those for county purposes, opposite to the names of persons or lots or lands charged with tax; and within ten days after the filing aforesaid, transmit to the auditor of public accounts, a certified statement of the amount as exhibited by said assessment roll, of first, second and third rate land, in separate items, the number of polls and the amount assessed on bank stock in his county, and also a certified statement of the amount of county revenue charged on said roll; which he shall deliver to the treasurer of the county; and within the same time, shall also make out a complete duplicate or transcript of the roll or rolls aforesaid, and deliver

Clerk shall carry out amount of taxes, state and county, separately, and send statement to auditor.

Statement to county treasurer.

Duplicate &
precept to
collector.

the same, together with a precept in the name of the state, tested by the clerk, under the seal of the circuit court, and directed to the collector of his county, commanding him to collect the taxes charged in said transcript, by demanding payment of the persons charged therein, by distress and sale of their goods and chattels severally, or by sale of the tracts of land and lots mentioned in said transcript, according to exigency, and that he pay over the monies collected by him by virtue of said precept, as directed by law, and return such precept, together with the transcript of the roll aforesaid, with an account of his acts thereon, to the said clerk, on or before the second Monday in December next ensuing the date thereof.

Person in pos-
session of real
estate, liable
for the taxes.

SEC. 15. Whosoever may be in possession of any real estate, at the time any tax is to be collected, shall be liable to pay the tax charged thereon; and if any other person, by agreement or otherwise, ought to pay such tax or part thereof, the person paying the same may by action of debt, recover the amount from the person so bound or liable; and all taxes upon real estate shall be a lien thereon until paid, and have preference of all other charges; and all taxes upon personal estate shall have preference of all other demands.

Lien of taxes
on real estate.

If board fail to
appoint an as-
sessor, clerk
shall give sher-
iff a trans-
cript of the
roll of the pre-
vious year, &c.

SEC. 16. If the board doing county business shall fail to appoint an assessor, and cause assessment rolls of taxable property to be made as required by this act, the clerk of the county, at the time appointed by law for making and delivering to the collector a precept and duplicate of the assessment roll, shall make out a duplicate or transcript of the assessment roll of the last preceding year, containing a complete list of all the polls and lands, lots and other taxable property in such county, as they may stand charged with on said roll, and annex thereto all the taxable lands which may appear from the register, catalogue and map of lands, not to be on the said roll, and shall also add any additional polls or other property that may at any time be discovered, and deliver the same with a precept as required by the fourteenth section of this act, to the acting sheriff of the county, who is hereby declared to be the collector for such purposes; and such collections shall be a part of his official duty as sheriff, and he shall proceed to collect and pay over the amount of such duplicate, in the same time, way and manner, and under the same restrictions and penalties, as are hereinafter provided for the government of collectors in cases of regular assessments: and the clerk shall also within the time prescribed as aforesaid, transmit a certified statement of the amount of the lands and polls in said duplicate, to the auditor of public accounts, in the same manner and form as is required in cases of regular assessments, noting in such report the failure in making a new assessment roll.

SEC. 17. The board doing county business shall, at their May session, appoint some suitable person collector of the state and county revenue, who shall, before the duplicate is ready for delivery, make an oath or affirmation before any person authorized to administer oaths, that he will well and truly perform the duties of his office, and shall enter into bond, to be filed with the clerk, with security to be approved of by the board, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office as prescribed by law. And such collector may appoint as many deputies as he may think necessary or proper, who shall be sworn, and possess the same power and authority, and be governed by the same rules and regulations as his principal, such being at all times responsible for the acts of his deputies; and should any deputy fail to pay over any monies collected by him as such, for state or county revenue, such principal is hereby authorized to proceed against him, in the same summary manner as is provided for proceedings against collectors in like cases: *Provided*, That no person who may have been collector for a preceding year, and who has not at said May session, settled and paid off all prior revenue, shall be re-appointed collector.

Collector, to be appointed by board and his oath and bond.

Collector may appoint deputies.

Collector may proceed vs. deputy. Collector who has not paid up, shall not be re-appointed.

Sheriff shall collect, where no other will accept, and penalty for refusal.

SEC. 18. The sheriffs of the several counties, if no other suitable person will accept the appointment of collector, shall collect the state and county revenue; and if any sheriff shall neglect or refuse to give bond and perform all the duties required of collectors, such sheriff shall be liable to the penalty of five hundred dollars, to be recovered in an action of debt, in the name of the state, to be prosecuted by the attorney prosecuting the pleas of the state, in any court having jurisdiction thereof, and to be collected and paid into the state treasury.

SEC. 19. The clerks with whom the collector's bonds [are] required to be executed and filed by this act, shall within thirty days after the filing, transmit a certified copy of such bond to the auditor of public accounts, who shall file the same of record in his office, and transcripts thereof shall in all cases be sufficient evidence of the execution of the same, by the obligors therein mentioned, such transcripts being certified as true by said auditor, and his certificate authenticated by the state seal.

Copy of collector's bond to be sent to auditor.

Copy of bond evidence.

SEC. 20. The collector, on receiving the duplicate and precept, which he shall demand at the office of the clerk at the expiration of the time limited for their completion, shall proceed to collect the taxes charged thereon, by demanding payment thereof, at the most usual and best known place of residence of each person charged with state or county revenue, or from the person charged, at any other place, on or before the first day of September next ensuing; and on

Collector shall demand payment, and how.

Collector
shall give re-
ceipts.

the payment of the full amount of the state and county revenue due from any person, shall give a receipt, in which the amount paid and for what year, shall be particularly designated, in words at full length: *Provided*, That a demand, of the person, at any other time within the county, shall be a sufficient demand.

Collector
shall receive
part payment
for land taxed
in gross.

SEC. 21. Any collector, in cases of gross assessment of taxes upon any lot or tract of land, upon the application of any claimant or owner of a part thereof, either divided or undivided, of such lot or tract, to pay a part of the taxes, interest and charges due on such lot or tract, proportionate to the quantity of such lot or tract owned or claimed, shall receive the same; provided the owner or claimant will specify with sufficient certainty to such collector, by a map or plan of such lot or tract, or by a memorandum of the undivided part of a survey, which indicates the boundaries thereof, to be delivered to such collector by such owner or claimant; and the balance of such taxes, interest and charges, shall be a lien only on the balance of such lot or tract of land.

If tax is not
paid by first
September,
goods may be
sold.

SEC. 22. If the taxes are not paid to the collector, on or before the first day of September, he may proceed to collect the same by distress and sale of the goods and chattels of the person charged, or of the goods and chattels of the person found in possession of the lands or town lots charged with such unpaid taxes, giving six days notice of the time and place of such sale, by written notices set up in three of the most public places in the township where such sale is to be made.

For want of
goods lands
may be sold,
and notice of
sale.

SEC. 23. If no goods or chattels can be found, out of which to make the taxes charged on lands and town lots, the collector shall give notice in some weekly newspaper published in his county, or if no such paper be there published, in some paper published in the county nearest thereto, also by setting up a written copy of such notice in some public place in each township of his county, for four weeks preceding the second Monday in November annually, notifying all whom it may concern, that he will on the second Monday of November next ensuing the date of such notice, commence selling at the court house door, or where courts are usually holden in such county, or at the most public place in the county seat, all and singular the lands and town lots in said county, on which the taxes due thereon for the year or years (naming the year or years for which he is authorized to collect) are not paid, on or before the said second Monday in November, and that such sale will be continued from day to day, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon of each day, until all are offered for sale; but such notices are not to contain any description of lands or lots: *Provided how-*

ever, and it is hereby made the further duty of such collectors, to put up a written notice at the court house door of the proper county, describing each tract of land or town lot intended to be sold as aforesaid, at least four weeks previous to such day of sale.

Proviso, that notice be put up at court house door describing the tract.

SEC. 24. Before any collector shall proceed to make any sale of real estate under the provisions of this act, he shall procure and file in the clerk's office of his county, a verification, under oath, of the printer or some person belonging to his office; that the advertisement herein before required to be published, relating to the sales of lands and town lots, a copy of which is to be annexed to such verification, has been duly published the length of time required by this act.

Printer's oath of publication to be filed.

SEC. 25. After having filed evidence of the publication of the notice required in the preceding section, the collector shall proceed in pursuance thereof, on the said second Monday of November, between the hours of nine and four o'clock of said day, to expose to sale each and every tract of land and town lot, on which the taxes are not paid, by the description and number by which they are designated on the duplicate, for the taxes and interest due thereon, and the costs of advertising and selling the same, or so much thereof as will sell for the amount due and chargeable thereon, to the best bidder for ready cash; such collector declaring at such exposure to sale, in what manner the division of a lot or tract of land shall be made, if a part thereof shall pay the tax and other charges thereon, and continue from day to day, between the said hours, to expose the said lands and lots to sale, until all shall be duly offered.

Collector shall sell land &c. second Monday of November.

SEC. 26. When any lot or tract of land or part thereof, shall be sold for the non-payment of the taxes and costs and charges thereon, the collector shall give to the purchaser, a certificate in writing, describing the same with specific certainty, the sum paid therefor, and the time when the purchaser will be entitled to a deed for such lot or tract or part thereof; which certificate shall be assignable and transferable by endorsement on the same; which assignment shall have the same force and effect as the assignment of other bonds for the conveyance of lands; and if the owner or claimant of the lot or tract of land described in such certificate, shall not within two years from the date thereof, pay to the purchaser, his heirs or assigns, or to the clerk of the circuit court of the county in which such lot or tract of land be situate, for the use of such purchaser, his heirs or assigns, the sum mentioned in said certificate, with interest thereon, at the rate of one hundred per centum per annum, together with such other taxes, costs and charges upon the lot or tract of land sold, as mentioned in said certificate, as may have accrued under the laws of this state, and have been paid by

Collector's certificate of sale.

Certificate shall be assignable.

Owner may redeem within two years.

Deed to be
made after
two years.

Deed to be
prima facie
evidence of
regularity of
sale.
Record of
deed.

Infants, &c.
may redeem
within three
years.

Clerk entitled
to twenty five
cents on re-
demption.

Deed of no
validity if tax
has been paid.

such purchaser, his heirs or assigns, if vouchers of the payment thereof be deposited with said clerk or produced to such owner or claimant; the said collector or his successor in office at the time such deed is demanded, shall, after the expiration of the said two years, execute to the said purchaser, his heirs or assigns, in the name of the state of Indiana, a conveyance of the lot or tract of land so sold as aforesaid and described in said certificate; which conveyance shall vest in the person to whom it is given, an absolute estate in fee simple, subject to the claims of the state or county for all taxes, costs and charges accrued and remaining unpaid upon such lot or tract of land, after such sale as aforesaid; and such conveyance shall be *prima facie* evidence that the sale was regular, according to the provisions of this act. And every such conveyance, executed by the collector or his successor, and duly acknowledged before any officer authorized to take acknowledgments of conveyances, may be recorded and have like force and effect as other conveyances are acknowledged and recorded: *Provided*, That infants, idiots, females covert, and insane persons, who are owners or claimants of lands or lots sold under the provisions of this act, may redeem such lands or lots, at any time not exceeding three years after the sale thereof, in the same manner as is provided in other cases: *And provided also*, That every person wishing to redeem any land or lot sold under the provisions of this act, by depositing the money with the clerk of the court, shall pay to the said clerk, at the time of depositing the redemption money, the sum of twenty-five cents for his services: *Provided*, That no sale of land for taxes, nor deed made in pursuance thereof, shall be of any validity, if the taxes for which the same is sold, shall have been paid prior to such sale.

SEC. 27. All lands and town lots which shall not be sold as above provided, and the taxes charged thereon still remain unpaid, shall still remain charged therewith until finally paid, and such taxes and charges, from the second Monday in November, in the year such taxes were assessed, shall bear interest at the rate of six per centum per annum, until paid. And the board doing county business, before the duplicate for the succeeding year is made out, shall examine the delinquent list returned by the collector, and strike therefrom all lands which they know to be forfeited or relinquished to the United States, all lands or lots which have been double listed, or on which the taxes have been paid; and also strike off all polls where there is no probability that the tax thereon can be collected, and correct all manner of errors that may exist, and see that the clerk makes due return of such corrected lists of former years, to the collector, every year. And the several clerks, when they make out the duplicate of taxes for each and every year, shall annex to

the new duplicate of taxes, the taxes and charges of any and all former years that remain as unpaid, on lands, lots, polls and personal property, on the delinquent list of the preceding year, after its correction by the board as herein before directed, and the same, together with the interest thereon, shall be collected by the collector of the current year, as herein before directed.

SEC. 28. Taxes are hereby made a lien on the land or town lot on which they may be due, in whosoever hands such lands or town lots may come; and when any land or town lot is offered for sale for any such taxes, it shall not be necessary that the collector should sell it as the property of any particular person; and if it should be sold as the property of any particular person, no misnomer of the owner or supposed owner, or other mistake respecting the ownership of such land or town lot, shall ever in any way affect the sale, or render it void or voidable.

Taxes declared a lien on lands and lots.

Misnomer of owner shall not avoid the sale.

SEC. 29. At any time before the sale of goods and chattels, or lands and town lots, under the provisions of this act, the owner or claimant may release the same, by the payment of the taxes, interest and charges for which the same are liable to seizure and sale; and whenever any balance of any sale of any goods and chattels under this act, over and above what is sufficient to pay the taxes, interest and charges for which the same were sold, remains, the collector shall pay the same over to the owner of such goods and chattels, on his demand. And if at any time within two years after the payment of any tax, the person who has paid the same can satisfy the board doing county business, that such tax was improperly assessed, or paid by mistake, when it was not legally chargeable, the said board shall order that the same be repaid, distinguishing whether it belong to the state or county to refund, and such order shall be a legal debt against the county or state, and shall be paid by the collector for the county, or by the treasurer of the county or state, according to the nature of the debt, and such collector or treasurer shall be entitled to a credit for the amount thereof, as in other cases of payment of other claims.

Owner may pay tax any time before sale.

Surplus of avails of sale to be paid to owner.

Payment of tax improperly assessed, shall be refunded.

SEC. 30. In cases where sales of goods and chattels, lots or lands are made under the provisions of this act, unless the purchaser shall within such time as may be allowed by the collector who makes such sale, pay the purchase money, the collector may at his discretion, again expose the property to sale, or sue such purchaser for the amount of the purchase money, and shall recover the same with costs, and ten per centum damages.

Collector may re-sell property bid off where bid is not paid, or sue purchaser.

SEC. 31. If the collector of any county, shall at any time unavoidably fail to offer for sale the delinquent lands or town lots in his county, or may have offered them for sale and the

Sale of land in certain cases may be made 1st Mon-

day of April, and delinquent list allowed.

purchaser thereof shall refuse to pay the collector the amount due thereon, it shall be the duty of such collector, to again advertise and sell such land or lots, on the first Monday in April next succeeding, and such advertising and sale shall in all things be governed by the provisions of this act, and be as legal and valid to all intents and purposes, as such sales would have been, had they been made on the second Monday in November; and when such collector shall have settled at the treasury at the proper time, the amount charged against him, he shall be entitled to draw on the treasury for the balance in his favour, on account of lands that shall not sell when offered by him on the said first Monday of April; which account shall be made out and sworn to, as is provided for in this act for his delinquent return.

Collector's return and its requisites.

SEC. 32. The collector of taxes, in his return to the precept before mentioned, shall state fully and distinctly, the payment of taxes made, by way of credit to the several persons and property charged on the transcript of the assessment rolls aforesaid, the payments enforced by distress and sale of goods and chattels, and in like manner the sales of lots and tracts of land or parts thereof, and the persons to whom and the sums for which the same were sold; also the taxes remaining unpaid, designating particularly the tracts or lots remaining unsold, the name of the owner or claimant, if known, the name of the person delinquent in the payment of other taxes, and the tax or property with which he is charged, and the legal cause of failure to enforce payment as commanded in said precept, and such other special matters as are provided by this act to be by him done; and the truth of such return shall be verified by the affidavit of the collector, to be taken before the clerk. And if any individual shall be injured or sustain damage by a false return of any collector, made to any precept under the provisions of this act, or other illegal or fraudulent act of such collector, such individual, upon suit to be brought against such collector and his securities, upon their bond, for his use, shall recover treble damages, and full costs and charges.

Affidavit to return. Individual remedy vs. collector for false return or illegal acts.

Delinquent lists, how posted.

SEC. 33. It shall be the duty of the clerks of the several counties, to make out four copies of the list of delinquents, as returned by the collectors of their several counties, one of which they shall put up in some conspicuous place in their offices, and shall keep the same up at least twelve months, and shall cause three other copies to be posted up in three of the most public places in their counties, within ten days after receiving said return; and the board doing county business in any county, may, if they should deem it necessary, cause fifty copies of such delinquent list to be printed and circulated through their county: *Provided*, That it shall be lawful for any collector to proceed by distress and sale of

Delinquent taxes may be

goods and chattels, to collect any taxes returned delinquent, within ten days after making such return.

SEC. 34. All collectors shall have power to proceed in the collection of taxes due them, for two years from the time at which they were bound to pay over the state and county revenue in each year, in the same manner they could have done during their appointment; but this provision shall not be so construed as to authorize any collector to collect taxes by him returned as delinquent, after having received credit therefor.

SEC. 35. Each and every collector is authorized and required to assess a state and county tax for all real or personal estate or persons that were residents of the county on the first day of May preceding, that may not have been assessed, and if any non-resident is standing a covering horse in his county or district, to assess and collect the same amount of tax from the owner or keeper of such horse, that resident owners of such horses are required to pay as a tax in similar cases; and at the time he makes return of the precept and list of delinquents, as required by this act, shall make out, sign and verify by affidavit, a list of the property and persons by him so assessed and the taxes collected thereon; and no allowance shall be made to any collector, on his delinquent list, by the auditor or county treasurer, until he shall have complied with the foregoing requisition. And it shall be the duty of the clerk to publish a list of the unassessed property that has been assessed, and taxes collected thereon by the collector, in the same manner and at the same time that he publishes the delinquent list.

SEC. 36. When a collector discovers that any tract of land or town lot has been assessed more than once for the same year, he shall collect only the tax really due, and make return of the balance as illegal assessments; and in all cases where too much personal property has been through mistake charged by the assessors, the collector may remit the excess of tax, and report the same with the list of illegal assessments: *Provided however*, That all such lists of illegal assessments, returned by any collector, shall contain a description of the property illegally assessed, in what the illegality consists, and the names of the persons concerned, and be verified by affidavit, and filed with the clerk, before it shall have any effect.

SEC. 37. If any collector shall decease, or become unable from bodily infirmity to perform the duties of his office, the clerk shall forthwith appoint a collector in the place of the one deceased or infirm as aforesaid, who shall take the oath of office aforesaid, before said clerk, and give bond with security to be approved by said clerk, with like penalty and condition as herein before prescribed; and the said collec-

collected within ten days after return.

Collector may collect uncredited delinquent taxes within two years.

Persons omitted may be assessed by collector.

Stud horses.

List of unassessed taxes collected shall be returned.

Collector may correct double listing and excessive listing, and make return.

In case of decease or infirmity of collector, clerk shall appoint, and duties of the appointed collector.

Remedy on
deceased or
removed col-
lector's bond.

Proviso, infirm
collector may
appoint a de-
puty.

Collector
shall receive
county orders
and audited
warrants.

Collector
shall pay state
revenue by se-
cond Monday
of December.

Shall be al-
lowed for de-
linquent list.

tor shall forthwith demand and receive from the person in whose possession the same may be, the precept and duplicate of the assessment rolls aforesaid, and shall immediately proceed to complete the collections as commanded by said precept. And such collector shall be liable under the provisions of this act, for the amount of the assessed taxes of his county, after deducting those which appear by the memorandum of the deceased, or the statements of the infirm collector, to have been collected; and the executors, administrators, heirs, devisees and securities of the deceased collector, and the infirm collector and his securities, shall be liable under the provisions of this act, for the amount of taxes collected by them severally, unless the same be paid over as is herein provided: and any person injured by the neglect of a deceased or infirm collector, to enter credits for taxes paid on the transcripts aforesaid, shall have redress by action on such collector's bond, for the damages thereby sustained; and if any person charged with taxes on the transcript of the deceased or infirm collector, no evidence being furnished to the successor of payment thereof, by or on the part of such collector, deceased or infirm, be able to produce a receipt for such taxes paid such prior collector, the successor aforesaid shall not be charged therewith, but shall take up such receipt, giving his own in lieu thereof, and return the same with said precept, and the amount thereof shall be recoverable as before provided: *Provided however,* That this section shall not be so construed as to prohibit any collector, who may be disabled by bodily infirmity, from appointing deputies under the provisions of the seventeenth section of this act.

SEC. 38. Every collector of taxes shall receive from any individual or individuals, orders regularly drawn upon the treasurer of his county, in payment of taxes due such county, and audited claims or promises of the state, in payment of the state revenue.

SEC. 39. It shall be the duty of the collectors of the several counties, to pay to the state treasurer, the amount of the taxes assessed on their respective counties, for the purpose of raising a state revenue, on or before the second Monday in December in each year; and if there be any deficiency in the amount thereof, he shall account for the same, by producing to the auditor of public accounts, a certified statement to be made by the clerk of his county, attested by his signature and official seal, of the amount of delinquencies in the payment of taxes, specifying the name of the person and the property or tax for which he is delinquent, as appears from such collector's return to the precept; and it is made the duty of the clerk to make out such statement and certificate, and calculate the amount thereof: and if the

amount of such certified statement of delinquencies, and the treasurer's receipt for the payment aforesaid, will balance the charges on the books of the auditor, he shall give him a quietus for the amount of such taxes.

Auditor's
quietus.

SEC. 40. Each collector shall be entitled to the following fees for his services: nine dollars for every one hundred dollars by him collected of state tax, and six dollars for every one hundred dollars of county tax by him collected, and in the same proportion for less sums, to be retained by him in making payment, and credited therefor in his settlement with the auditor of public accounts and county treasurer; five per centum commission where goods are distrained, and taxes, commission and charges paid before sale; eight per centum commission on sales of distress, and charges for keeping property distrained, together with the taxes and charges, out of the monies received therefrom; on sales of real estate, five per centum on the amount for which the same is exposed to sale, and twenty-five cents for each certificate of sale under this act, which are to be added to and estimated in the sum for which any tract of land or lot, or part thereof shall be sold; and fifty cents for making each conveyance herein before provided for, to be paid by the purchaser, his heirs or assigns. There shall also be allowed to the collector by the treasurer of state, upon the settlement of the duplicate, for advertising lands and lots for sale, for the non-payment of taxes in a public paper, such sum as is usually charged per square for other advertisements; and if the collector shall make full and complete payment into the state treasury, on or before the day required by law, he shall be allowed to retain the further sum of six cents per mile for travelling to the seat of government to make such payment, the distance to be calculated from the court house in the respective counties to the seat of government.

Collector's
fees.

SEC. 41. If any collector shall fail to make settlement of the taxes assessed in his county for state purposes, at the time required by this act, it shall be the duty of the auditor of public accounts, forthwith to charge in the account against such collector, five per centum damages on the amount or balance due from such collector, on account of such taxes, for such delinquency; and unless the said debt and damages and the interest thereon, be paid to the treasurer of state within thirty days after the second Monday in December aforesaid, the auditor shall with due diligence, cause suit to be commenced upon such collector's bond, against him and his securities, for the debt and damages due as aforesaid; and said amount shall bear interest from the day at which payment thereof should have been made, at the rate of ten per centum per annum until paid.

Auditor shall
charge collec-
tor 5 per cent.
for failing to
pay over in
time.

Auditor shall
sue collector
for default.

SEC. 42. There shall be no continuance of any suit insti-

Suit vs. collector shall not be continued without consent.

Judgment vs. those on whom process is served, and scire facias vs. those not found may afterwards issue.

Auditor's stated account, evidence.

Plea of payment restricted.

Judgment and 6 per cent. in favour of state

Auditor may employ attorney.

Suit to be where collector resides.

Treasurer may bring suit vs. collector for default in paying county revenue, by first Monday in January.

Judgment and 7 per cent. in

tuted against any collector and his securities, under the provisions of this act, when process is returned executed upon any of the defendants, unless by the assent of the attorney prosecuting the same on behalf of the state; and judgment shall be rendered against the defendants upon whom process is executed, and the attorney may elect to proceed by scire facias or summons against the other defendants, and make them parties to said judgment, at any future term of the court in which such suit was instituted: and upon the trial of any such suit, the stated account of the collector against whom the suit is brought, certified by the auditor of public accounts, as truly transcribed from the account current against such collector, on the books of said auditor's office, authenticated by the state seal, shall be conclusive evidence of the demand against such collector and his securities; nor shall such collector or his securities be permitted to set off or allege in payment of such demand, any payment or claim of credit, unless the same has first been presented to the auditor of public accounts, and been allowed or rejected by him, or the same could not by using due diligence have been presented to said auditor, for his determination thereon, to be had before trial of such suit.

SEC. 43. The court before whom such trial may be had, in rendering judgment against the defendants, shall also include in said judgment, six per centum on the amount ascertained to be due the state, besides the usual costs and charges allowed in suits prosecuted on the behalf of the state; which per centum shall be for the use of the attorney prosecuting such suit.

SEC. 44. The auditor of public accounts is authorized to employ such attorney or attorneys at law, in the prosecution of suits in behalf of the state, for matters relating to the principal concerns thereof, as he may deem expedient; and all suits against collectors and their securities, shall be commenced in the circuit court of the county where the collector or any of the defendants reside.

SEC. 45. Whenever the collector of the county revenue shall fail to pay over the taxes assessed on his county, to the treasurer of such county, on or before the first Monday in January, after receiving the precept and duplicate of the assessment rolls, or account therefor to such treasurer, in the manner provided by this act in relation to the state revenue with the auditor of public accounts, the said treasurer shall proceed with due diligence to commence suit against said collector and his securities, upon said collector's bond, in the circuit court of his county; and upon the trial thereof, such collector's return to the precept aforesaid, shall be conclusive evidence: and if judgment ought to be rendered in favour of the said treasurer, against the defendants, the court

shall include in such judgment, five per centum damages on the amount due for said taxes, and unpaid on the first Monday of January aforesaid, with six per centum interest on the amount from the time aforesaid, and six per centum on the amount of the judgment, for the use of the attorney prosecuting such suit, together with costs and charges to be taxed as in other cases; and no claim of payment or set-off shall be allowed on such trial, unless the same be first presented to, and allowed or rejected by the said treasurer.

favor of county.

Plea of payment restricted.

Sec. 46. If any collector shall fail to return the precept and duplicate, as herein before directed, or shall make a false return thereto, the judgment upon the determination of suits which may be brought, either by the auditor of public accounts, or the county treasurer, against such collector and his securities, shall be for the full amount, severally, of the taxes for the state and county revenue, as contained in the transcripts of the assessment rolls aforesaid, together with the damages, commission, costs and charges as herein before provided; and of the amount of said taxes, the stated account of the auditor aforesaid, and the transcript on file in the clerk's office aforesaid, in the several cases, shall be sufficient evidence. And it shall be the duty of the circuit prosecutor, to aid the county treasurer in prosecutions under this act, when requested, and to give advice and counsel of and concerning the revenue, when requested by any officer concerned in the collection thereof; and it shall be the duty of all officers, to give information to the grand jury of the proper county, of all frauds and offences against this act.

Suit for failing to return the precept and duplicate.

Duty of prosecutor.

Sec. 47. If any officer shall neglect or refuse to perform any of the duties imposed on him by this act, he and his securities shall forfeit and pay to the state, not less than fifty, nor more than one hundred dollars for each offence, besides all damages which may be sustained by the state or county, or any individual, in consequence of such violation of his duty; the said penalties to be adjudged, within the limitations aforesaid, by the court before whom the adjudication shall be had, and to be recovered with costs of suit, in an action to be brought upon the official bond of such officer; and this provision shall be construed to extend to all cases of violations of official duties not provided for by this act. And if any clerk shall fail or refuse to forward to the auditor of public accounts, a statement of the amount of first, second and third rate land, the number of polls and the amount of bank stock assessed in his county, as directed by this act, or shall fail to forward to the auditor of public accounts a certified copy of any collector's bond, as required by this act, it shall be the duty of the auditor, within sixty days after each and every such failure, to cause suit to be brought against such clerk and his securities, on the official bond of such clerk.

Officers shall inform for violations of this act.

Penalty on any officer for a violation of this act.

Penalty on clerk failing to certify to auditor.

for such failure; and on the trial of any such suit, a certified statement of the auditor of state, under his hand and seal, shall be sufficient evidence of such failure; and such failure shall subject such clerk and his securities, to all the penalties of this section herein before provided, and shall also make such clerk and his securities liable for the whole amount of such tax, and all costs.

Bonds to be payable to the state, and suits thereon how prosecuted.

SEC. 48. All bonds directed to be taken by this act, shall be made payable to the state of Indiana, and all suits brought thereon, shall be prosecuted in the name of the state; and if brought for the use or benefit, or by the direction of any person or persons, such suit shall be brought in the name of the state, on the relation of such person or persons; and several rights may be prosecuted in the same suit on such bond, and one judgment entered thereon shall be no bar to other rights; but the state, or any person having right thereto, may have the defendants to such judgment again summoned by scire facias, to shew cause why execution should not be had on such judgment, for the debt or damages suggested to be due, owing or belonging to the party complaining, as often as such right may accrue.

All officers withholding state money, liable to pay 5 per cent.

SEC. 49. Any officer withholding the payment of any monies belonging to the state, after the same shall be demanded or become due, shall be liable to pay five per cent. in damages and ten per centum interest per annum, from the date of such defalcation, to be recovered of such officer and his securities, or either of them, by action as in other cases; and the accounts in favour of the state in all cases, upon the trial of suits against all and every person or persons charged on the books of the auditor of public accounts or treasurer of state, and certified to be true by the said auditor or treasurer, as above provided in the case of collectors, and authenticated by the state seal, shall be evidence in all cases of debtors, of the charges therein stated, and put the defendant upon his defence to the demand.

Accounts of state officers, to be evidence

County board shall assess tax on licenses at time of application.

SEC. 50. The value of licenses to retailers of spiritous liquors and foreign and domestic groceries, tavern keepers, vendors of foreign merchandize, and vendors of wooden clocks, may be determined upon by the board doing county business, at any session thereof; and in cases of application for license to keep a tavern, or to retail spiritous liquors and foreign and domestic groceries, inquiry shall be made as to the place of residence of the applicant, and the profits of his business; and after such inquiry, the board shall determine what amount such applicant shall pay for his license, within the limitations of the second section of this act; and such applicant, upon the payment of such sum to the county treasurer, and exhibiting his receipt therefor to the clerk of the county, shall receive a license to be issued by said clerk,

License, how issued.

under the seal of the circuit court of the county; and in cases of application for a license to vend foreign merchandize, the board, upon examination of the applicants and others under oath, if required, as to the amount of capital by them employed in their business, shall assess the prices of licenses by the following rates; on capitals of one thousand dollars and under, ten dollars; and in the ratio of five dollars for every additional thousand dollars, in addition to the first ten dollars: *Provided*, That the price of any license shall not exceed the sum of forty dollars; such license to issue under the restrictions herein provided in the case of licenses to tavern keepers: and the assessment of taxes on ferries, shall be made by said board, at the time they fix the rates of taxation upon the several objects of taxation for county revenue, taking into consideration their annual value; and such assessments shall be added by the clerk to the assessment rolls herein before provided, after their return into his office, and shall be collected by the collector as other taxes, by virtue of said precept: *Provided however*, That this act shall not be so construed as to authorize any board doing county business, to assess a tax on any ferry or other property belonging to the state.

License to
vend foreign
merchandize
according to
capital.

Tax on ferries

How collect-
ed.

State ferries
exempt.

Tax on lands
mortgaged to
loan office,
how enforced.

SEC. 51. If the taxes due on any of the lands mortgaged to the superintendent of the loan office shall not be paid when required, the collector may expose said lands to sale, subject to such mortgage, and no such sale shall affect the validity of the same; but if said land shall not sell for want of bidders, the collector shall return the amount due to the treasurer of state, who shall receive his certificate thereof as cash, and the same shall be charged in the books of the loan office, against such mortgager, and the same shall be a lien on such land, and said mortgage shall not be cancelled until the said taxes, and the interest and charges thereon, shall be paid.

CHAPTER LXXXII.

An Act for Opening and Repairing Public Roads and Highways.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That all public roads and highways shall be opened, amended and repaired, agreeably to the directions of this act; and the boards doing county business shall have authority to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road or part thereof in their respective counties.

County board
shall order all
matters in re-
gard to roads.

Petition for
new roads.

SEC. 2. Applications for new roads shall be made by petition, signed by at least twelve freeholders of the township or townships in which such road is desired, (three of whom shall be of the immediate neighbourhood,) specifying the proposed beginning, course and termination thereof.

Notice of ap-
plication.

SEC. 3. Notice of each intended application shall be given by advertisement in two or more public places, in said township or townships, at least twenty days prior thereto.

Viewers to be
appointed.

SEC. 4. The said board, when the petition is presented and publicly read, and upon proof of notice as above, shall, if they deem the road prayed for necessary, appoint three disinterested freeholders of the county as viewers thereof.

Oath of view-
ers, and their
duties.

SEC. 5. The said viewers, or a majority of them, having taken an oath or affirmation faithfully and impartially to discharge their duties, shall proceed to view the route proposed, and if they deem it of public utility, lay out and mark such road on the best ground that can be obtained, not running through any person's enclosure, of one year's standing, without the owner's consent, unless a good way cannot otherwise be had.

Shall not run
through en-
closure, unless
&c.

Viewers shall
make return
to board.

SEC. 6. The said viewers, or a majority of them, shall make and certify a copy of their proceedings to the ensuing session of the board, when the same shall be publicly read; and if no objection be made to such proposed highway, the said board shall cause a record thereof to be made, and order the said road to be opened and repaired a necessary width, not exceeding forty feet, which shall thenceforth be a public highway.

If no objec-
tion, road to
be opened.

Remons-
trance against
roads, by own-
er of land and
review.

SEC. 7. If any person through whose land the said road may run, feels aggrieved thereby, such person may set forth his, her or their grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders, and assign a day and place for them to meet.

Oath and du-
ty of review-
ers.

SEC. 8. The said freeholders, having had five days notice from either of the parties, shall meet and take an oath or affirmation, faithfully and impartially to discharge the duties assigned. They shall then, or on any other day (prior to the next session) to which the majority may adjourn, proceed to review the proposed road, and assess the damages, if any, which such objector or objectors will sustain from such road being opened and continued through his, her or their lands, and shall report the same to the ensuing session of the board.

Assessment of
damages and
report.

If report be in
favour of ob-
jector, county
shall pay costs
and damages.
If against him
he shall pay
costs.

SEC. 9. If the majority of said reviewers assess and report damages in favour of the objector or objectors, the costs and damages shall be paid out of the county treasury; but if the majority report unfavourably, the objector or objectors shall pay the costs; and in either case, said road shall be opened and recorded.

SEC. 10. If any three freeholders, of any township or townships, through which the proposed road may run, shall object, at the time and in the manner aforesaid, to the same, as not of public utility, other viewers shall be appointed, who shall proceed as before directed.

Three freeholders may object for non-utility.

SEC. 11. If the majority of said viewers report against the utility of said road, the same shall not be established, unless the petitioners will open and maintain the same at their own expense, and in either case the petitioners shall pay the costs that shall have accrued; but if they report favourably thereto, the objectors shall pay the costs of the review, and the road ordered to be opened and recorded.

When petitioners shall open & maintain road.

SEC. 12. Any person or persons wishing to cultivate land through which any road may run, may petition the board, for permission to turn such road on his, her or their own land, or the land of any other person consenting thereto, at his, her or their expense.

How owner of land may turn road at his expense.

SEC. 13. Three viewers shall thereupon be appointed, who shall proceed to view the same, and report the respective distances and situation of the ground of the established and the proposed road.

Viewers to be appointed & their report.

SEC. 14. If upon the report, the board being satisfied that the public will not be materially injured by such change, they shall order the same; and upon satisfactory assurance of said road being opened, equally convenient for travellers, the board shall vacate so much of the former road, as lies between the different points of intersection, and record said reviewer's report.

When road is turned and opened it shall be recorded.

SEC. 15. Any person or persons desiring to change any state road, passing through his, her or their lands, may apply for that purpose to the circuit court of the proper county, by petition, signed by twelve freeholders of the proper township or townships, particularly setting forth the part so prayed to be altered.

Person wishing to change state road may petition circuit court.

SEC. 16. The said court shall thereupon appoint three disinterested freeholders of the proper county, as commissioners, who shall meet within forty days thereafter, and having taken an oath or affirmation, faithfully and impartially to discharge the duties assigned, proceed to view the established and proposed road, and if justice and the public good require such alteration, they shall lay off and mark such new way, and report their proceedings in writing, under their hands and seals, to said court; which shall be filed and recorded in the clerk's office, and such alteration shall be a part of said state road, and opened accordingly, and the old part vacated.

Circuit court shall appoint three viewers, and their oath and duties.

Report to be made, filed & recorded.

SEC. 17. That when any state road is opened, it may be change agreeably to the two foregoing sections; but the old road shall not be vacated, until the person or persons

State road opened, may be changed, and how.

applying for such alteration, shall cut, open and repair the new, fully equal to the old road.

State road running into another c'ty., how changed.

SEC. 18. When any alterations as aforesaid shall be proposed to extend from one county into another, twenty-four freeholders of either county, may file their petition, setting forth the part of the road proposed to be altered, with the clerk of the circuit court of the proper county, at least forty days before the term at which they may make such application.

Clerk to notify clerk of adjacent county

SEC. 19. The clerk of said court shall forthwith notify the clerk of the adjacent county in writing, that such petition has been filed, and transmit him a copy thereof

Notice to be laid before C. court.

SEC. 20. The clerk receiving such information and copy, shall lay the same before the circuit court of his county, on the first day of its next term.

Counties shall each appoint three commissioners.

SEC. 21. The said courts respectively shall appoint, on the part of each county, three disinterested freeholders as commissioners, and the court receiving the copy, shall set a time, (not under forty days) for the meeting of the respective commissioners, at the dividing line of said counties, and as near as may be to the point where the proposed road crosses.

Sheriff shall notify commissioners.

SEC. 22. The clerk of the said last mentioned court shall forthwith give written information, to the sheriff of the county where the original petition was filed, of the time and place of meeting of such commissioners. And the sheriffs of said counties shall notify, respectively, the commissioners, at least ten days before the meeting.

Commissioner's oath and duties.

SEC. 23. The commissioners appointed as aforesaid, shall meet at the time and place specified, and after taking the proper oath or affirmation, proceed to discharge the duties assigned, being governed by the requisitions of the sixteenth section of this act, except that the commissioners shall report their proceedings, at the next term of said courts, respectively.

Report of the majority and confirmation.

SEC. 24. If the majority of said commissioners report in favour of an alteration of such road, the said courts upon being satisfied that the provisions of the seventeenth section of this act have been complied with, by opening the new way, shall cause so much of said road as lies in each county, to be recorded as a state road, and vacate the old one.

Compensation of commissioners.

SEC. 25. That the commissioners appointed under the provisions of this act, and the surveyors, chain bearers and markers they may necessarily employ, shall severally receive such reasonable pay as the court may allow, which, together with all legal cost, shall be paid by the person or persons applying for such alteration.

Vacation of road petition for.

SEC. 26. Any twelve freeholders of a township or townships, may make application to the proper board, by peti-

tion signed by them, for the vacation of any road or highway, as useless, and the repairing thereof an unreasonable burthen to the township or townships.

SEC. 27. The said petition shall be publicly read, on two different days of the session at which it is presented, and the matter continued without further proceedings to the next session. Continuance of petition.

SEC. 28. At the ensuing session, the same shall be again publicly read, and if no remonstrance be made thereto in writing, signed by twelve freeholders or householders, the board may proceed to vacate such road or any part thereof; and the costs and charges shall be defrayed by the county. If not objected to, road to be opened.

SEC. 29. If a remonstrance in manner aforesaid be made, the board shall appoint viewers, who shall be governed as those appointed in similar cases. The judgment of the board shall be conclusive in the premises, unless the same be appealed from, in nine months, to the circuit court of the proper county; which court is authorized to hear and determine the same, and the decision shall be final and conclusive. Remonstrance and reviewers. Judgment final unless appealed from in 9 months.

SEC. 30. Any person, for his convenience, may have a cart way, not exceeding eighteen feet in breadth, laid out from or to any plantation, dwelling-house or public highway, on petition to the proper board, (having advertised his intentions, as required by this act,) which board shall cause the same to be publicly read, and if they think proper, order a view of the same. Cart way, how obtained

SEC. 31. Said cart way shall, in the discretion of said board, be recorded and declared a common cart way, for the use and convenience of the public, and shall be opened by the persons petitioning therefor. Cart way may be recorded, &c.

SEC. 32. If the said road shall be laid out through any person's land objecting thereto, the damages shall be assessed as is provided in case of objection to public roads and highways, which being paid by the person applying for such way, he may proceed to open the same agreeably to the order of the said board. If objected to damages shall be paid by applicant, and how.

SEC. 33. If the owner or owners of any land through which such way passes, be desirous of improving the same, he, she or they may be permitted to turn the same, on as good ground, not increasing the distance more than one twentieth, on application to said board. Owner of land may turn cart way.

SEC. 34. Any person may be permitted by said board, to hang swinging gates upon said cart way, but shall keep the said gate or gates in good order and repair, under a penalty of one dollar for every offence, to be recovered before a justice of the peace of the proper county, by any person Gates may be hung on cart way, and penalty for not keeping them in order.

prosecuting for the same, one moiety to the prosecutor, and the other towards keeping said way in repair.

Who shall
work on roads
and highways

SEC. 35. That all male inhabitants between the ages of twenty-one and fifty years, (persons exempted by law, or excused by the boards doing county business, for good cause shewn, excepted,) shall work public roads and highways, two days in each year.

Non-residents
shall pay road
tax.

SEC. 36. All persons, non-residents included, being the owners of any real estate, shall pay as a road tax thereon, an amount equal to one half of the state tax chargeable thereon; but each person may discharge the road tax thus imposed, by working under the supervisor of the road district, where the real estate may be situate, at the rate of fifty cents per day.

Clerk shall
deliver to su-
pervisor a list
of land own-
ers, &c. and
tax thereon.

SEC. 37. The clerks of the circuit courts shall make out a list of the names of all persons holding real estate, whether by patent, deed, bond, or otherwise, and annex the amount of road tax charged thereon, and deliver the same to the proper supervisor, on or before the first day of June; and the said supervisor shall hand over the same to his successor.

Duplicate
shall contain
column for
road taxes,
&c.

SEC. 38. The said clerk, when he makes out the duplicate for the current year, shall enter in a separate column, the amount of the road tax assessed upon real estate, of all non-resident proprietors, the gross amount of which he shall certify to the treasurer, at the same time he certifies the amount of the public revenue.

Coll'r. shall
collect road
tax by sale,
&c.

SEC. 39. The collectors of the state and county revenue, of the several counties, shall collect the said road tax so assessed, as county revenue is collected; and if the same be not paid, such lands shall be sold, at the time and in the manner provided for the sale of non-resident lands for state and county taxes, and pay it over, when collected, to the county treasurer: *Provided*, That said collector, shall receive in payment of such road tax, the certificate or receipt of the supervisor of the proper road district, and file the same with the said county treasurer.

Receipt of su-
pervisor shall
discharge
road tax.

Road tax on
town lots not
incorporated.

SEC. 40. That there shall be assessed, on all town lots, in unincorporated towns, a road tax equal to one half of the amount of the county tax thereon, to be collected or worked out, in the same manner as is provided for lands owned by residents and non-residents; the labour to be bestowed to the improvement of the streets of said town.

Penalty for
failing to
work when
notified three
days.

SEC. 41. Each person made liable to work, by this act, who shall fail to attend in person, or by satisfactory substitute, at the time and place appointed (within said district) with the designated tool or instrument, having had three days notice thereof, or having attended, shall spend his time in idleness, or disobey the supervisor, shall forfeit fifty cents

for each such delinquency, to be recovered by action of debt, in the name of the supervisor, before any justice of the peace of the proper county.

SEC. 42. The said supervisor shall be accountable for the sums recovered as aforesaid, and shall expend the same in repairing the roads in his district. And in suits brought by the supervisor in pursuance of this act, he shall be a competent witness; and on any suit as aforesaid, he shall not be liable for costs.

Supervisor shall expend the money on road.
Supervisor a witness against delinquent.
Kind of notice.

SEC. 43. Where the supervisor has not an opportunity of giving personal notice of the time and place allotted for such work, a written notice thereof, left at the dwelling-house or usual place of residence of the party, shall be deemed sufficient.

SEC. 44. Every person who shall at the request of the supervisor of his road district, furnish a plough or wagon, with a pair of horses or oxen and driver, and perform one or more day's work with them, shall for each day's work so performed, receive a credit of three days work, and so in proportion for services of a similar kind, with greater or less force.

Work with wagon, &c.
how credited.

SEC. 45. The said supervisors, before entering upon their duties as such, shall take an oath or affirmation, before some person duly authorized to administer the same, faithfully and impartially to discharge the duties enjoined.

Oath of supervisor.

SEC. 46. Any householder, refusing to accept said appointment of supervisor, or to take the oath required, shall forfeit and pay the sum of six dollars, to be recovered by presentment or indictment: *Provided*, no person shall be compelled to accept said appointment, oftener than once in four years.

Penalty on householder for refusing to serve as supervisor.

SEC. 47. To each of the supervisors elected or appointed, the board doing county business shall assign his road district, together with the number of hands allotted, and cause to be forwarded to him, a certificate of his appointment, setting forth the boundaries of his district, and hands.

County board shall assign districts and hands.

SEC. 48. The sheriffs of the several counties, shall deliver to the supervisors respectively, their appointments, and make return thereof to the clerk of said board, who shall enter the same on the records of said court.

Sheriff to deliver appointment.

SEC. 49. As often as the roads and highways within the district of a supervisor, shall require opening or repairing, he shall call out the hands allotted him, oversee and keep them close to their business, and work upon, open, clear and repair the same; and to keep them so in repair, he shall, when the hands shall have worked the number of days required by this act, if the roads require it, call out the hands assigned, in proportion to the road tax on them severally assessed.

Supervisor may call out hands as often as needful.

Supervisor
may enter ad-
joining lands
to repair any
road.

SEC. 50. It shall be lawful for any supervisor, or any person or persons by his order, to enter upon any lands adjoining, or lying near the road in his district, and cut or open such ditches or drains, and construct such dams, as shall be necessary for the making or preservation of said road, doing however as little injury to the owner of such land as possible.

Penalty for
injury to
drains, &c.

SEC. 51. Any person who shall break down or destroy said dams, or stop or fill said ditches or drains, shall forfeit five dollars for every such offence, to be recovered in the name of the said supervisor, before any justice of the peace of the proper county, and applied to the opening and repairing of roads in said district.

Supervisor
may take tim-
ber, gravel,
&c. adjoining
the road.

SEC. 52. Every supervisor shall have full power to enter upon any unimproved lands adjoining or near to the road, and gather, dig or cause to be dug, any gravel, sand or stone, or cut down any wood or trees, and carry off the same, that shall be necessary for the making or reparation of said road, doing however as little damage as may be to the owner of such land.

Damages to
be paid by
county.

SEC. 53. If any person feels himself aggrieved by the removal of such timber, stone or gravel, from his, her or their land, such person may apply to the board doing county business, who shall appoint three disinterested freeholders, who after taking the proper oath or affirmation, shall proceed to assess the damages, if any there be, which shall be paid out of the county treasury.

Guide posts.

SEC. 54. Every supervisor shall erect and keep a post, at the forks of every road or highway within his district, containing a legible inscription, directing the way and mentioning the distance to the most remarkable place on each road respectively, under a penalty of five dollars.

Penalty for
injury to
guide posts.

SEC. 55. Any person who shall intentionally demolish such post, or deface or alter any inscription thereon, shall, for every such offence, forfeit and pay to said supervisor the sum of ten dollars, to be recovered before any justice of the peace of the proper county, for the use of the roads in said district.

Penalty for
obstructing
road.

SEC. 56. If any person shall obstruct any public road, unnecessarily, and to the hindrance of passengers, such person shall forfeit a sum not exceeding ten dollars, to be recovered, in the name of the proper supervisor.

Supervisor
shall inform
against those
guilty.

SEC. 57. The supervisors respectively, shall as often as informed of such obstruction, commence suit against the person obstructing as aforesaid, before any justice of the peace of the proper township, which suit shall be prosecuted as for debts of a similar amount.

Penalty for
suffering ob-

SEC. 58. Every person fined as aforesaid, shall forfeit one dollar, for each day he may suffer such obstruction to re-

main, to the hindrance of passengers, to be recovered as aforesaid. struction to remain.

SEC. 59. When a public road or highway shall run through, or border on any plantation, and become obstructed by the falling of trees or otherwise, it shall be the duty of the owner of such plantation to remove such obstruction, so soon as the same shall come to his knowledge; for which the supervisor of such road shall give him a reasonable compensation, by a credit on his liability to work on roads. Owner of plantation thro' which road runs shall remove obstruction.

SEC. 60. Each supervisor shall be allowed seventy-five cents per diem, for every day he may be necessarily employed in the discharge of his duties, to be paid out of the county treasury, except two days for his personal privileges, and the amount of his road tax assessed, at fifty cents per day. Compensation to supervisors.

SEC. 61. In all cases where the supervisor shall wilfully fail or neglect to keep his said road in good repair, or to faithfully appropriate monies collected or received for the use of his road, or in any manner to comply with the duties required of him, by this act, he shall forfeit and pay a sum not exceeding ten dollars, to be recovered before any justice of the peace of the proper township, to the use of his said road district. Penalty on supervisor for neglect of duty.

SEC. 62. Whenever in the opinion of the board doing county business, the public convenience shall require that a bridge should be built over any water course, they shall direct the supervisors to build the same, if they deem it expedient, or they may appoint three resident persons of the proper township, as superintendents of the building thereof. County board may direct supervisor to build a bridge or appoint 3 superintendents.

SEC. 63. The said superintendents shall take an oath or affirmation, before some person duly authorized to administer the same, faithfully and impartially to discharge their duties; a certified copy of which shall be filed in the clerk's office of said board. Oath of superintendent.

SEC. 64. The said superintendents shall advertise in the most public places in the county, the time and place they will contract with some fit person to build such bridge, which contract shall be in writing, signed by the parties contracting, and filed in the proper clerk's office. Superintendent shall give notice when the contract will be let.

SEC. 65. The board shall allow the said superintendents a reasonable compensation for their services. Superintendent's compensation.

SEC. 66. Bond and security shall be required from the undertaker of such bridge, which shall be approved by the board doing county business. Undertaker shall give bond.

SEC. 67. The board may receive from individuals, subscriptions and donations, as a contribution towards the building of such bridge, which shall be applied accordingly. Individual subscriptions may be received.

SEC. 68. If in the opinion of the board, it would be of public utility to have a bridge built over any creek or wa- Board may authorize

bridge to be built, as ferries are granted.

Proviso.

Road fund may be applied to erecting bridges.

Supervisor shall require his hands to work their number of days or to pay fifty cents.

Accounts to be kept, and report to c'ty. board.

Supervisor shall pay over to successor.

Proviso.

Penalty on supervisor for failing to require the work or money, &c. or failing to perform other duties.

Justice collecting money to pay over to supervisor.

Supervisor may buy ploughs, &c.

Road on c'ty. line to be worked as if in the county.

ter course, where money cannot be obtained by donation or taxation without oppressing the people, to build the same, they are hereby authorized to empower any individual or individuals to build the same, under the rules and regulations that ferries are established: *Provided*, the person or persons building such bridge, shall always be bound to transfer the same to the county, at ten per cent. on cost, when the board shall be willing to purchase it.

SEC. 69. The board may appropriate any money that may be in the county treasury, belonging to the road funds, to the building of bridges in said county.

SEC. 70. Each supervisor shall cause all the hands in his district, to work the number of days required by law, or collect from each person fifty cents for each day he fails to work, and keep an exact account of the work done by each man, and money collected for the use of roads, and return an accurate copy thereof to the clerk of the county, on the first Monday of May after his appointment, and pay to his successor all money collected as aforesaid, not expended upon his roads, which account he shall attest under oath: *Provided*, That in all cases when the hands allotted to any road or road district, shall have performed the number of days work required of them by law, if such road shall remain unfinished, or shall at any time be found out of repair, it shall be the duty of the supervisor of such road, to call the hands assigned him, to complete such road, or to keep the same in repair.

SEC. 71. If any supervisor shall fail to compel the hands of his district to work out the full time required of them by law, or pay the money required by this act, or shall fail to keep or return an accurate account of the work done, or money collected as aforesaid, or shall fail to pay over to his successor the money which may remain in his hands unexpended as aforesaid, he shall for each offence, pay not less than ten nor more than fifty dollars, to be recovered in the name of the state, before any justice of the peace, for the use of his road district; which shall be paid by the justice collecting the same, to the successor of said supervisor, and give him therein a list of all judgments obtained by his predecessor not collected, who is hereby authorized to collect the same, as if they were obtained in his own name.

SEC. 72. Each supervisor shall be authorized to purchase, with monies in his hands arising from fines collected from delinquents in his district, ploughs, scrapers, crowbars, hammers and other necessary implements.

SEC. 73. When any public road shall be established, or has heretofore been established on a county line, the boards doing county business in their respective counties, shall

cause the same to be opened or repaired, in the same manner as if the whole of said road was in the limits of the county.

CHAPTER LXXXIII.

An Act respecting Salines and Saline Reserves.

[APPROVED, FEBRUARY 4, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the governor be and he is authorized and empowered, from time to time, or as often as he shall receive information of any salt springs on the land of the United States, within the limits of this state, to employ some fit person, if he should deem it necessary, to examine the same, and ascertain the probable quantity of land necessary for working such spring or springs so found, or which may have been returned as salt springs by the surveyors of the public lands; and the governor is further authorized and empowered, for and in behalf of the state, to make application to the president of the United States, for such quantity of land, at each and every salt spring, as he may deem sufficient for working the same.

Governor's duty in relation to salt springs discovered, &c.

SEC. 2. And the governor, as agent for and in behalf of the state, is hereby invested with full power to do and transact, all and every thing that may be necessary on the part of this state, fully to carry into effect the second proposition contained in the sixth section of an act of congress, entitled "an act to enable the people of [the] Indiana territory, to form a constitution and state government, and for [the] admission of such state into the Union, on an equal footing with original states."

Governor's further duties.

SEC. 3. And any expense that may be created by virtue of this act, shall be paid out of the contingent fund, in the same manner as other contingencies are paid.

Expense, how paid.

SEC. 4. It shall be the duty of the presiding judge of each judicial circuit, on application made to him, to grant unto any person or persons, a lease of any salt spring, lick or other place likely for salt to be made, within his judicial district, together with so much land as may be necessary for carrying said lease into effect, if the land be within the control of the state, for any term not exceeding ten years; and on granting any lease as aforesaid, it shall be the duty of the judge granting the same, to take from the person or persons so applying, a bond with sufficient security, payable to the state of Indiana, in the sum of five hundred dollars, conditioned that such lessee or lessees, shall not destroy or injure any

President judges of circuits shall grant leases of salt springs.

Lessee's bond to P. judge.

timber, more than what may be necessary for carrying into effect the conditions of such lease; which bond shall be filed by the judge taking the same, in the office of the clerk of the circuit court in the county where the lease is given; and the judge aforesaid, shall receive from the obligor or obligors in the said bond, the sum of two dollars for his trouble in giving such lease.

Judge's fee.

For failure to make salt, lease shall forfeit.

SEC. 5. If the person or persons taking any lease as aforesaid, shall neglect or refuse to make the necessary preparations for making salt, within two years after the granting such lease, then such lease or contract is hereby declared forfeited and of none effect.

Superintendent of Royce's lick and Rock lick reserves, appointed.

SEC. 6. That Elisha Denney of Washington county, be and he is hereby appointed superintendent of section number fifteen, township two north, in range four east, commonly called by the name of Royce's lick reserve, and also the saline reserve, commonly known by the name of Rock lick reserve, in the said county of Washington; and that Samuel Cobb of Orange county, be and he is hereby appointed superintendent of the French lick reserved township, being in township sone and two north, of range two west, of the Vincennes district, lying in the said county of Orange; and that Benjamin Rogers of Monroe county, be and he is hereby appointed superintendent of the salt lick in said county, commonly known by the name of Jackson's lick.

Of French lick.

Of Jackson's lick.

Bond of superintendents

SEC. 7. The said superintendents, shall before entering on the duties of their said appointments, severally give bond and freehold security, to the state of Indiana, to be approved of by the clerks of the circuit courts in the respective counties in which they live, as follows, to wit: the said Elisha Denny, in the penalty of two hundred dollars, and the said Samuel Cobb, in the penalty of five hundred dollars, conditioned for the faithful performance of their said trusts, and for the paying over all monies that may come into their hands by virtue of their said appointments, agreeably to the provisions of this act, or any acts that may hereafter be passed in relation thereto.

Powers and duties of superintendents of Rock lick, Royce's lick, and French lick, as to leasing, &c.

SEC. 8. The said superintendents for Royce's lick, Rock lick and the French lick reserves, shall severally have power, and they are hereby respectively authorized to lease, by quarter sections or a less quantity, for the term of one year, to commence from and after the first day of March in each year, the reservations aforesaid, for the best price that can be had in cash, which shall in no case be less than fifty cents per acre, to be paid annually, on the first day of December in each year, after the conclusion of the contracts made as aforesaid. The superintendents aforesaid, shall give at least fifteen days notice, by putting up four or more advertisements in the most public places in the neighbourhood

Notice of leasing, how given.

of said reserves, that they will on some day certain, in the month of February, offer to the highest bidder the use and occupancy of such portions of said reserves as they may respectively determine to lease for the ensuing year, stating particularly the conditions of such lease; it shall be the duty of such superintendents, to take of the lessee or lessees, bond and good security for the faithful performance of their contracts, which shall provide for the due payment of the rent, for the preventing of the waste of timber, making repairs, and for the peaceable surrender of the premises, at the end of the term. Lessee's bond.

SEC. 9. The boards respectively, doing county business in the said counties of Washington and Orange, shall annually make to such superintendents, such allowance for their services as they may deem reasonable; which allowance shall be certified by the clerk of the board making the same, to the auditor of public accounts, who shall thereupon issue a warrant upon the state treasury for the payment of such allowance, and which shall be paid out of any monies in the treasury arising from the leases aforesaid, on the respective reserves for which they are superintendents. Compensation to superintendents of Royce's lick & Rock lick.

SEC. 10. The said Benjamin Rogers, as superintendent of Jackson's lick in Monroe county, shall have power and he is hereby authorized, to lease for the term of five years, at a price not less than one hundred dollars per annum, to commence on the first day after the expiration of any existing lease, the lick aforesaid, and for the best price that can possibly be had in cash, payable annually on the first day of December in each year; for which purpose, said superintendent shall give at least twenty days notice, by setting up ten advertisements at least, in the most public places in said county of Monroe, that he will on some day certain [in the month] next preceding the expiration of the present lease, offer to the best bidder, the use and occupancy of the said lick, with the section of land properly attached to said lick, for the term of five years, stating particularly the conditions of such lease; and it shall be the duty of the said superintendent, to take of the lessee, bond with good and sufficient freehold security, for the faithful performance of the stipulations of the said contract, in the penalty of one thousand dollars, payable to him the said superintendent, and his successors in office; which shall provide for the due payment of the rent, and such repairs as he in his wisdom may direct; also, for preventing the waste of timber, and other improvements, and for the peaceable surrender of the premises leased, at the end of the term. Power & duties of superintendent of Jackson's lick.

SEC. 11. It shall be the duty of the said superintendent of Jackson's lick, or his successors in office, before entering on the discharge of the duties required by this act, to take Bond & oath of superintendent of Jackson's lick.

an oath or affirmation, for the faithful performance of the same, and shall moreover give bond, with good freehold security, to be approved of by the clerk of the circuit court of Monroe county, in the sum of one thousand dollars, payable to the state of Indiana, conditioned for the faithful performance of the duties required of him by this act, and for the paying over all monies that may come into his hands, as such superintendent, and for the safe delivery to his successor in office, of all bonds or other papers relative to said salt lick, which bond shall be deposited in the clerk's office of said county; and said superintendent shall receive for his services, such compensation as shall from time to time be allowed to him by the general assembly.

His compensation.

Superintendents shall pay over money to treasurer of state.

SEC. 12. It shall be the duty of the said superintendents respectively, to pay over to the state treasurer, all monies received from the lessees on said reserves, on or before the second Monday in December annually, taking the treasurer's receipt therefor.

Vacancies, how filled by county boards of Washington, Orange and Monroe.

SEC. 13. In case of the refusal of any of the superintendents hereby appointed, to accept of the appointment, and give bond as prescribed by this act, or in case of the death, removal or resignation of any of the said superintendents, or any successor to them, the boards doing county business in the said counties of Washington, Orange and Monroe, at their next session thereafter, or at any subsequent session, shall fill such vacancy by appointment; and the person so appointed shall be governed in all respects, as provided for in this act.

Private leases may be made in certain cases.

SEC. 14. In case of any failure, from any cause whatever, of any of the said superintendents, to make the leasing contracts aforesaid, at the time specified in this act, it shall be lawful for said superintendents to make private contracts in relation thereto, at any time they may conceive the interest of the state may require the same; which contracts, so made, shall in all respects be governed by the provisions in this act contained.

Superintendents may demand monies, books, &c. from predecessors, and may sue predecessor for failure.

SEC. 15. The said superintendents are hereby authorized to call on their predecessors for all monies, papers, books and obligations, pertaining to the said reserves, which may be in their hands, whose duty it shall be to deliver up and pay over to their successors in office, all such papers, bonds, books, and monies belonging to the same, under the penalty of five hundred dollars, payable to the state of Indiana, taking a receipt for the same, and are empowered to demand and receive and sue for the same, on the bond of such predecessor, or in their own name.

Saving clause as to vested rights of state

SEC. 16. That all rights that may have accrued or that may hereafter accrue to the state, or to any individual under an act entitled "an act authorizing the leasing of Roy-

pe's lick and Rock lick reserves in the county of Washington," approved January the 7th 1828, and an act amendatory thereto—approved, January 29th 1830, and an act entitled "an act authorizing the leasing of the French lick reserve in Orange county," approved January the 30th 1830, and an act entitled "an act authorizing the leasing of Jackson's lick in Monroe county," approved, January the 30th 1830, be and the same are hereby reserved to the state, individual or individuals, as the case may be; and the said superintendents and their successors in office, are hereby fully empowered to enforce the same for the benefit of the state; and all other parts of said acts not touching any of said rights, and coming within the purview of this act, be and the same are hereby repealed.

and former
lessees, &c.

CHAPTER LXXXIV.

An Act providing for a Public Seal and Press.

[APPROVED, DECEMBER 13, 1816.]

Be it enacted by the General Assembly of the state of Indiana, That the governor of this state be, and he is hereby authorized to provide a seal, and also a press for the said state; and that a sum not exceeding one hundred dollars be, and is hereby appropriated for that purpose, to be paid out of any monies in the treasury not otherwise appropriated.

CHAPTER LXXXV.

An Act to establish Seats of Justice in New Counties.

[APPROVED, JANUARY 14, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever any new county shall be laid off, five commissioners shall be appointed, who, at the time of discharging the duties herein enjoined, neither reside in such new county, nor hold any real estate therein. It shall be the duty of said commissioners, or any three or more of them, to convene at such time and place in such new county, as the general assembly shall appoint, and being first sworn to discharge the duties assigned them by this act, they shall proceed to fix on the most eligible and convenient place, for the permanent seat of justice of such new

Five commis-
sioners.

Convene.

Receive do-
nations.

Take bond for
conveyance.

Report.

May adjourn.

Vacancy of
agent, how
filled.

County com-
missioners
may hold spe-
cial sessions.

county, taking into view the extent thereof, the quality of the land, and the prospect of future, as well as the weight of present population, together with the probability of future divisions; and it shall be the further duty of the said commissioners to receive donations in land, from any person or persons owning lands in such county, and offering donations for the use of the same, and to fix on such place for the seat of justice in such new county, as near as may be to that position which is likely to be central and permanent, after future divisions, as may best subserve the interest of such county. The said commissioners shall inquire and ascertain, whether any land on which they may be inclined to fix the seat of justice, can be obtained by donation or by purchase, at a reasonable price, sufficient in quantity and suitable in quality and situation, for the site of a town; and if such quantity of land, cannot be obtained by donation or by purchase, at a reasonable price, then they shall fix on the next most eligible place, where such land can be procured as aforesaid; and the said commissioners shall take a bond or bonds of any person or persons proposing to give or sell any such land, payable to the board of county commissioners and their successors in office, and conditioned for the conveyance of such tract or tracts of land so given or sold, to such person as the county commissioners shall appoint as agent to receive the same; which bond or bonds the said commissioners shall deliver to the county commissioners, together with a plain and correct report of their proceedings, containing a particular description of the land so selected, which shall be considered the permanent seat of justice for such county.

SEC. 2. It shall be the duty of the commissioners, in the event of the non-attendance of a sufficient number to transact the business aforesaid, to adjourn to any other day, and give the absent commissioners notice of the day to which they have so adjourned; and the board of county commissioners, in case of death, removal or resignation of the agent as aforesaid, to appoint from time to time a successor, when and as often as may be necessary, who shall give bond as hereafter provided; and it shall be the further duty of the said board of county commissioners, when and so often as it may be necessary to carry this law into complete effect, to hold special sessions of the said board; and the county commissioners and said agent, are hereby vested with all further powers necessary to carry this law into full and complete operation, according to the true intent and meaning thereof.

SEC. 3. That if in the opinion of the commissioners appointed as aforesaid, no situation can be found whereon to lay off a town for a county seat, that would be equally convenient to the citizens of the county, as to establish such

county seat at some town already laid off, then said commissioners are hereby authorized to receive donations in lots, money and adjoining lands, and to establish the county seat at such town, as they shall think will be most for the interest of such county: *Provided however*, That ten per centum of such donations, be reserved for the use of a county library.

A town may be selected for the seat of justice.

SEC. 4. It shall be the duty of the board of county commissioners, forthwith after receiving the report as herein provided, to appoint some suitable person, a resident of such county, as an agent, whose duty it shall be, after giving security to be approved of by the said board of county commissioners, for the faithful discharge of the duties of his said office, to receive good and sufficient deeds of conveyance, for any land which may have been given, for the use of the county as above provided, and to lay off the same into town lots, streets and alleys, according to such plan as the county commissioners may direct; he shall proceed also, from time to time, to sell the said lots, or so many of them as the said commissioners may deem proper and necessary, on such terms as the county commissioners may consider most advantageous to the county; and to collect all monies arising from the sale of said lots, and pay the same into the county treasury; he shall also make conveyances to the purchasers of such lots. The monies arising from the sale of lots as aforesaid, shall be a fund in the treasury of such county, out of which the commissioners appointed by virtue of this act, shall be first compensated for their services, and then the price of any land which may have been purchased for the use of the county, shall be paid, and the balance shall be applied, so far as necessary, in defraying the expenses of erecting the necessary public buildings, for the use of the county, and if monies still remain, such remainder shall be applied as other monies in the treasury.

Agent, how appointed & his duties.

SEC. 5. Any person or persons of whom any lands may be purchased for the use of such county, shall at the time of giving bonds for the conveyance of the same, receive of the commissioners aforesaid, a certificate of the quantity and price of the same, which certificate shall entitle such person to receive the amount of the price of such land, out of the first monies remaining in the treasury of such county, after compensating the aforesaid commissioners, according to the provisions aforesaid. The said commissioners shall be entitled to receive each three dollars, for every day they may be necessarily employed, in performing the duties enjoined on them by this act, and in travelling to and from the place of meeting; and the agent aforesaid shall be entitled to receive for his services, such compensation as the board of county commissioners may think just and reasonable.

Commissioners to give certificate of the quantity and price of land purchased.

Compensation.

SEC. 6. It shall be the duty of every person appointed a

Agent to deliver books papers, &c.

gent under the provisions of this act, who shall remove out of the county, for which he shall have been appointed, resign said agency, or vacate the same in any other way whatever, forthwith to deliver to his successor in said office, and in case no such successor shall have been appointed, to the board of county commissioners or treasurer of the proper county, all deeds, notes, books, or other papers appertaining to said agency, under pain of forfeiting the conditions of the bond, which he may have given for the faithful performance of the duties of his said office, taking a receipt from such successor, board of county commissioners or county treasurer, as the case may be, specifying particularly the deeds, bonds, notes, books or other papers, and amount of money, thing or things owing to him, in his official capacity, for the use of the county; and it shall be the duty of every county treasurer, who shall receive any such deeds, bonds, notes, books or other papers, to lay the same before the next board of commissioners to be holden in said county, who shall and they are hereby authorized to allow the said treasurer, a reasonable compensation for so doing, out of any monies in the treasury of said county, not otherwise appropriated.

Successor of agent, his duties.

SEC. 7. Every person appointed as agent, to receive any agency vacated as aforesaid, is hereby required to receive and receipt for all deeds, bonds, notes, books or other papers, in manner aforesaid, and to perform all and singular the duties, obligations and other things, relative to such deeds, bonds, notes, books or other papers so put into his hands, which could have been required of his predecessor, had he continued in said office, agreeably to the true intent and meaning of this act.

Agent to settle & account.

SEC. 8. All agents as aforesaid heretofore appointed, and those who may hereafter be appointed, shall every four months, and oftener if thereunto required, settle and account with the commissioners of their respective counties; and if any agent appointed as aforesaid, shall fail, neglect or refuse so to settle and account, or shall neglect or refuse to pay over any money which may have come to his hands, or shall neglect or refuse to do and perform any of the duties enjoined on him by law, it shall be lawful for said county commissioners to remove said agent from office, and appoint a successor, to whom the agent so removed, shall deliver all books, papers, notes, receipts, accounts, monies, goods and effects of every description, which may be in his hands belonging to the proper county; and on his refusing so to do, it shall be lawful for the commissioners of the proper county, to proceed by action of debt or covenant, on his bond; and on recovering a judgment on said bond, against

Failing to be removed.

such agent and his securities, execution shall issue, and there shall be no stay thereon.

SEC. 9. All agents as aforesaid, shall pay over to their successors in office, the board of county commissioners, or county treasurer, as the case may be, the same description of circulating medium which they shall have collected or received, for which they shall receive receipts, specifying the kind of money paid over; and any agent who shall fail or refuse to pay over as aforesaid, when ordered so to do by the county commissioners, he shall be liable to be removed from office by said commissioners; and it shall be considered a breach of his bond, on which he may be prosecuted by action of debt or covenant, as in the preceding section is provided.

Shall pay over the same circulating medium they receive.

SEC. 10. If any agent appointed agreeably to the provisions herein contained, shall die before he shall have completed all the duties enjoined on him by law, and having in his possession, at the time of his death, any deeds, bonds, notes, books or other papers as aforesaid, it shall be the duty of the executor or executors, administrator or administrators as the case may be, of every such decedent, to deliver to the person legally appointed to succeed the said testator or intestate in said agency, or to the county treasurer or board of county commissioners, all deeds, bonds, notes, books or other papers as aforesaid, in the same manner and under the same rules and regulations, that are pointed out in the preceding sections.

Executors &c. of agents, to deliver books and papers.

SEC. 11. No county commissioner, county treasurer or clerk of the circuit court, shall hereafter exercise the duties of agent as aforesaid; and every person holding the office of agent as aforesaid, who shall accept of either of the said offices, shall be considered as vacating said agency, which shall be filled accordingly.

Certain officers may not be agents.

CHAPTER LXXXVI.

An Act Incorporating Congressional Townships, and providing for Public Schools therein.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That each congressional township within this state, be, and the same is hereby constituted a body politic and corporate by the name and style of the "trustees of school township No. —," and in its corporate name and capacity, may sue and be sued, plead and be impleaded, in any court of competent jurisdiction.

Township incorporated.

C'ty. boards shall order election of trustees, and whether the school section shall be sold.

SEC. 2. It shall be the duty of the boards doing county business in the several counties within this state, at their next or some subsequent session after the publication of this act, to call a meeting of the qualified voters of the different congressional townships within their respective counties, by posting up notices thereof in writing, in three of the most public places in each township, at least twenty days prior to the time of said meeting, to be held at the school sections therein, or as near thereto as may be convenient, for the purpose of electing by ballot, three trustees in each township, who shall be freeholders or householders of the same, if there are no trustees in said township who shall have been previously elected, and also in those townships where the school lands have not been offered for sale, to determine by vote, whether the same shall be sold or not, which election shall be conducted in the same manner as is directed by the law regulating the election of state and county officers.

Ballot for and against sale of section, how taken.

SEC. 3. In those townships in which the school sections remain unsold, the electors thereof, at the election aforesaid, who favour a sale of such lands, shall write upon their ballot for trustees "sale," and those opposed to such sale, shall write upon their ballot "no sale;" and should a majority of the qualified voters in such township be in favour of selling such lands, the clerks of such election shall certify the same within ten days thereafter, to the school commissioner of the proper county: *Provided*, there shall be in such township twenty voters, otherwise such lands shall not be sold: *And provided also*, That in all cases where the citizens of any congressional township shall fail to decide in favour of a sale, at any such election, it shall be lawful for the trustees of such township, upon the application, by petition, of a majority of all the legal voters of any such township, to direct the school commissioner to sell the said school section, as hereafter provided.

Corporate style of board of trustees, their oath, &c.

SEC. 4. The three persons receiving the highest number of votes, in each township at any such election, shall be deemed duly elected, and shall hold their offices for the term of three years, and until their successors are elected and qualified, and shall be styled the "Trustees of school township No. —." Before entering upon the duties of their respective offices, they shall be sworn to discharge the duties enjoined on them by law, with fidelity and honesty. Said trustees when so elected and qualified, shall appoint a township clerk in their respective townships, who shall be sworn in like manner.

Township clerk.

How the section shall be divided and sold.

SEC. 5. Should a majority of the voters in any township, be in favor of the sale of the reserved section therein, the trustees thereof shall forthwith divide such section into such lots as will best suit purchasers, and ensure the best price

for the land; they shall also fix a minimum price to each lot, below which the same shall not be sold, and which shall in no case be less than one dollar and twenty-five cents per acre, all of which, the clerk of such township shall forthwith certify to the commissioner of the school lands of such county, hereinafter provided for, who shall record the same at length in a book to be provided for him by the county, and shall proceed to sell such section by said divisions, at public auction to the highest bidder.

SEC. 6. For the purposes in this act specified, there shall be a commissioner elected by the qualified voters of each county, at such time as shall be appointed by the boards doing county business, which election shall be conducted in all respects as provided in the law regulating general elections, who shall before entering upon the duties of his office, give bond payable to the state of Indiana, for the use of town schools in the proper county, in the penalty of ten thousand dollars, with six freehold securities to be approved of by the board doing county business of his proper county, conditioned for the faithful discharge of the duties of his office, and for paying over to his successor in office, all monies that may come into his hands in virtue thereof, which shall be filed and recorded in the recorder's office of the proper county. He shall also take an oath for the faithful execution of his duties. Said commissioner shall receive all monies accruing from the sale of school lands in his county, as interest or principal, and shall at the first session of the board doing county business in such county, after such receipt, file an account thereof, specifying distinctly, how received, to whom loaned, the securities, and the balance due; which report shall be filed by the clerk of such board. Such commissioner shall hold his office for the term of three years, and until his successor is elected and qualified, but shall be liable to removal, by the board doing county business, upon failure to give additional security, if required by such board, or upon conviction by indictment of any malversation in office, or on account of incapacity to discharge his duties. The treasurer of any county, may accept the office of commissioner, without resigning the office of treasurer.

School commissioner, how elected, and his bond and duties.

Commissioner shall receive & loan monies arising from sales of sections, his term of office, how removed and how punished.

C'ty. treasurer may be commissioner.

SEC. 7. The commissioner aforesaid, before making sale of any school lands as aforesaid, shall give at least sixty days notice thereof, by posting the same in three of the most public places in the township where the land is situate, at the court house door, and such other places as shall be deemed proper, also by advertisement in some public newspaper; the sale to be at the court house door of the county between ten A. M. and six P. M. and may be adjourned from day to day, until the sale be completed. The commissioner shall record the said sale in his book, and deliver a true copy

Sale of section, notice, &c.

Sale where recorded.

thereof to the recorder of the county, within five days thereafter, whose duty it shall be to record the same, and certify a copy thereof to the board doing county business, in the proper county.

Terms of sale,
and forfeiture
for non-pay-
ment.

SEC. 8. The commissioner shall require to be paid at the time of sale, one fourth of the principal, and legal interest for one year on the residue, in advance; the remaining three fourths of the purchase money to be paid at any period or periods to suit the purchaser, within ten years from the time of sale, the legal interest on which to be paid annually in advance; and a failure to pay the interest so annually accruing from the date of sale, or the residue of the principal, for the space of sixty days after the same shall become due, shall *ipso facto*, be a forfeiture of the tract of land, upon which the same shall be due and unpaid, and of the benefit of any payments made, and of the contract therefor, to the township; and the commissioner shall forthwith sell the said tract so forfeited as above, upon the same terms and under the same restrictions as before provided.

Re-sale.

Trustees may
cancel leases,
and sell sub-
ject to leases.

SEC. 9. The trustees of any township, may with the concurrence of the lessee of any part of the reserved section therein, cancel any unexpired lease; and if not cancelled, each tract so leased shall be sold, if the trustees so direct the commissioner, as other tracts, but subject to such lease; the full benefit of which, shall inure to the purchaser and his assigns, who shall have full power in his or their names, to require the fulfilment thereof.

Commission-
er's compen-
sation, and
shall pay over
to his succes-
sor monies&c.

SEC. 10. The said commissioner shall be allowed the sum of one dollar for every day necessarily employed in selling such lands, which when allowed by the board doing county business, shall be paid out of the county treasury, and he shall deliver to his successor in office, on demand, all books, papers and monies in his hands as commissioner, under the penalty of five hundred dollars, to be recovered by action of debt, in the name of the state of Indiana, for the use of the proper township, by suit against such commissioner and his securities, who are declared liable therefor on their bond.

Form of certi-
ficate of pur-
chase, &c.

SEC. 11. Said commissioner, on receiving the first payment for land sold as aforesaid, shall give the purchaser a certificate for the tract bought, in substance as follows:—"A. B. having on this day purchased, (here describe the tract) being part of the school section in such township, for the sum of — dollars and — cents, of which he has paid — dollars — cents, that being the one fourth part of such purchase money, and one year's interest in advance, on the residue of the principal, — dollars and — cents, payable in ten years from this date, together with six per cent. interest thereon annually in advance, at which period the said A. B. or assignee or representative, shall be entitled

to a deed in fee simple for said tract, in the name of said township; but on failure to pay said interest as it annually accrues, or the residue of said principal, within sixty days after the same becomes due, the said tract and purchase shall be forfeited and revert to the township. Witness my hand and seal this day of 18 . Commissioner.

SEC. 12. Any person who may bid off any tract of land offered for sale under this act, and who fails to make the first payment above required, shall be liable to pay ten per centum on the sum so bid, to be recovered by said commissioner by action of debt, in the corporate name of the trustees of the proper township, and the commissioner or deputy shall be a competent witness to prove the bid.

Penalty for non-payment of bid.

SEC. 13. Upon full payment of principal and interest for any such tract of school land, the proper commissioner shall execute a deed in fee simple therefor to the purchaser, his or her assigns, or legal representatives, in the name of the township; but no assignment of any certificate for any such tract, shall be recognized by such commissioner, without strict proof in a court of justice, unless the same be acknowledged before such commissioner, which he may take and record.

Commissioner's deed, &c.

SEC. 14. Whenever any school section shall be divided by a county line, the trustees may select in which county the said section shall be managed and sold.

How sold, where county divides section.

SEC. 15. The commissioner of the school funds, in their respective counties, shall keep in their record books, separate accounts of the principal and interest of all sums of money received by them as commissioners, in distinct entries, shewing the amount realized from each distinct school section, or part thereof.

Account of principal and interest to be kept separate.

SEC. 16. It shall be the duty of the trustees of each school township within this state, in which the school section has been sold, or may be sold under the provisions of this act, to call a meeting of the qualified voters of such township, at some convenient place therein, by posting up notices thereof in three of the most public places therein, for two weeks previous to such meeting, for the purpose of expressing by vote, whether the monies arising from the sale of such school lands, or from voluntary contribution, in such township, shall be deposited in the state loan office under the care of the state, to constitute a perpetual school fund, the interest of which to be applied to the free and equal education of all within such township, or whether it shall be loaned out as hereinafter provided, by the commissioner of the school fund.

How vote shall be taken to deposit money in loan office or to loan it.

SEC. 17. When a majority of the qualified voters of such township shall have assembled in pursuance of such notice, the trustees thereof shall proceed to take their votes in any manner deemed most easy and simple, as to the disposition

Vote to be recorded.

of the monies arising as aforesaid, which vote shall be recorded in the record book of the township by the clerk thereof.

Commissioner to be notified of the vote to deposit.

SEC. 18. If a majority of the voters in such township shall vote in favor of placing said monies in the state loan office, the interest whereof to be applied as above, it shall be the duty of the trustees of such township to inform the commissioner of the school fund of the proper county thereof in writing, which written information shall be spread by said commissioner upon his official records.

Commissioner when notified shall make deposit.

SEC. 19. When it shall be so determined in any township to dispose of such school funds, it shall be the duty of said commissioner, on being informed thereof by the trustees as above directed, to deposit the same in said loan office as soon as practicable, taking the receipt of the commissioner of said loan office for the same, specifying the amount deposited by the respective townships, which receipt shall be filed and recorded by said commissioner, who shall certify a copy thereof to the trustees of the different townships in which such lands have been sold, to be spread upon the township records by the clerks thereof.

Trustees may draw for interest on loan office.

SEC. 20. When monies are so deposited, an order for any amount of interest due thereon, drawn by the trustees of the proper township, and endorsed by the proper commissioner of the said school fund, shall be a sufficient voucher for the payment of the same by the superintendent of the loan office; and it shall be the duty of such trustees and school fund commissioner, when any such order is drawn, to spread a copy thereof upon their proper records.

State pledged to pay interest annually.

SEC. 21. The monies placed in the loan office of this state, under the provisions of this act, shall there remain, a permanent and perpetual fund, set apart for the purpose of township free schools, and the faith of this state is hereby solemnly pledged to the regular annual payment of the interest arising on such monies, at six per cent. per annum to the townships properly entitled to receive the same.

Commissioner shall loan fund not deposited.

SEC. 22. In case the voters of any school township shall not consent to dispose of the school funds according to the foregoing provisions, the commissioner of the school fund in the proper county, is hereby authorized to loan out, at not less than six per centum interest per annum, payable in advance, and annually thereafter, all monies that may come into his hands from said sections, as principal or interest, upon freehold security, giving, however, preference to applicants therefor, who are citizens and freeholders of the respective townships to which the money may belong, who may apply therefor within thirty days after receipt by the commissioner; which loan shall be made for a term not less than one nor more than three years.

SEC. 23. Previous to any person or persons being entitled to borrow any such monies, he, she or they shall file with said commissioner, the certificate of the recorder of the proper county, that a deed for the land proposed to be mortgaged, is duly recorded in his office, and that said applicant has a patent therefor from the United States, or that the title to the same is derived from the patentee, and that there is no mortgage, claim or lien thereon of record in his office; and also the certificate of the clerk of the circuit court of the county, that there is no suit pending, nor judgment of record in his office against such applicant, whereby such land may be affected, accompanying which shall be the affidavit of the applicant, that said land is free and unincumbered in any way whatever. The trustees of such township shall thereupon appraise the value of such land, exclusive of buildings, and deducting any contingent interest of dower or tenancy by courtesy; and upon such valuation filed in writing, the said commissioners shall loan such applicant, any sum not exceeding half the estimated value of such lands, nor in any instance exceeding, to one applicant or his agent, three hundred dollars: *Provided*, The said applicant shall first execute to the said commissioner and his successors in office, for the use of the township to which such money belongs, as security for the money so to be loaned, a duplicate mortgage to the effect following, to wit: I, A. B. of the county of—Indiana, do hereby mortgage, assign over, and transfer to—commissioner of the school lands of the county of—and his successors in office, for the use of—township, in—range—in said county, the following described land, to wit: (here describe the land) which land I declare to be in mortgage to secure the payment of—in—years from date, with legal interest thereon, payable in advance, annually; and I do agree that said land and all title, interest and claim therein, may be exposed to sale, if the money be not paid at maturity, for the principal and interest, or either of them, at the time the same or either of them shall become due and payable, or within sixty days thereafter, with five per centum damages thereon, and all costs; and I hereby acknowledge myself bound for the payment of any deficiency, in the amount of principal, interest and cost so due, after such sale, to be recovered by such commissioner or his successors in office, by action of debt in any court of competent jurisdiction. In witness whereof I have hereunto set my hand and seal this—day of—seal.” One of which duplicate mortgages, shall be filed and recorded in the recorder's office of the proper county, and the other, filed and retained by said commissioner.

Security required to be taken by commissioners on loans, & terms of loan.

Form of mortgage to commissioner.

Mortgage to be recorded.

SEC. 24. If any default be made, in the payment of in-

Forfeiture & foreclosure of mortgage.

interest accruing on any loan hereby authorized, for the space of sixty days next after the same may become due, such default is hereby declared and constituted a forfeiture of the further extension of credit on such loan, and the full amount of principal and interest shall thereupon become and be due and payable *instantly*; and upon such failure so to pay the interest, or to pay the principal when due, the proper commissioner shall forthwith advertise the premises mortgaged in security therefor, for public sale, in the same manner that real estate taken in execution is required to be advertised, and shall upon the day so notified, sell the said mortgaged premises to the highest bidder for ready money, and shall retain out of the proceeds thereof, five per centum on the amount for his trouble; with all other costs accruing on said sale, and the full amount of principal and interest unpaid on said loan, paying over the residue, if any, to the mortgager of said tract, or his legal representatives; and in case the amount made by such sale, be insufficient to pay the principal, interest, costs and per centum aforesaid, said commissioner shall forthwith proceed to recover the residue unpaid or not made, by action of debt against such person or persons owing the same, in any court of competent jurisdiction. Upon sale of the mortgaged premises as above, the commissioner shall on the receipt of the purchase money, convey the mortgaged premises sold, to the purchaser by deed, in as ample a manner as the person mortgaging could personally have done.

Sale & conveyance of mortgaged premises.

Penalty on commissioner for not loaning.

SEC. 25. When two or more applications are made at the same time, for the same money, the commissioner shall loan it to either, at his discretion, in conformity with the provisions of this act, upon the best security; and any commissioner, who may retain money in his hands, arising from the sale of school lands of his county, when the same could have been loaned upon good security, shall, upon conviction thereof, by presentment or indictment, be fined in any sum not exceeding five hundred dollars, and shall be deprived of his said office, and shall, with his securities, be liable on his official bond, to pay the whole amount so retained, together with twenty per centum thereon.

Commissioner shall retain 1 year's interest on loans.

SEC. 26. It shall be the duty of any commissioner of any school lands, when he shall loan money under the provisions of this act, to retain out of the amount loaned and charged to the borrower, one year's interest at not less than six per centum per annum, on the whole sum in advance, and also all proper costs and charges allowed against such person borrowing. The following fees and costs shall be allowed and charged for the services herein-after enumerated, to wit:

Fees.

For acknowledgment on a certificate

\$0 12½

For each certificate of purchase	25
Each entry of payment of principal or interest	25
For making deed to purchaser, to be paid by the purchaser,	75
For each appraisement of each tract to each trustee	25
For selling mortgaged premises, five per centum on the amount besides the costs of advertisement,	
For entering satisfaction of record	12½
For recording mortgage	25
For each mortgage to secure money loaned	50
To be paid by the borrowers of any school monies.	

SEC. 27. The clerk of the county board shall be allowed for recording all documents required to be entered by him, or other writing, twelve and a half cents per hundred words, and for all other services not herein provided for, according to such prices as may be established and allowed by the board doing county business for such services, to be paid by the borrower. All persons borrowing monies derived from the sale of school lands, shall at the time of obtaining the same, leave in the hands of the commissioner, the fees which may have accrued as above specified, to such commissioner and appraisers, and also the fee for recording the mortgage; and in all cases of unsuccessful application to borrow such money, such applicant shall be liable to pay all costs arising thereon, to be recovered at the suit of the party entitled thereto.

Clerk's fees.

Borrower shall advance fees.

SEC. 28. In all cases where such monies may be deposited in the state loan office, by the school commissioner, under the provisions of this act, such commissioner may retain out of the monies so deposited, one per cent. on the amount, as a full compensation for that service, and no more.

Commissioner's per cent. on deposits.

SEC. 29. Nothing in this act contained, shall prevent any purchaser from paying the full amount of purchase money, at the time of such purchase, or at any time thereafter: *Provided however*, that no such prompt payment shall entitle such purchaser to a repayment of any interest that may have been paid in advance.

Purchaser may make prompt payment.

SEC. 30. When any lands mortgaged under this act, shall at the time thereof, be unincumbered by dower or tenancy, no subsequent marriage of the mortgager, shall subject such premises to dower or tenancy; and when any mortgager, under this act shall die, and there shall be a default of the principal or interest of the sum by him or her borrowed, on the premises so mortgaged, it shall not be necessary for the proper commissioner to give any notice to the heirs or representatives of such decedent, other than the public notice for the sale thereof above required, and the commissioner shall sell said mortgaged premises, as others forfeited in the life time of the mortgager, and the heirs of

Mortgager's after marriage shall not incumber lands. Mortgager's decease shall not require the heirs to be made parties in foreclosing.

Proviso, as to redemption.

such mortgager shall never be allowed to object to the title of any purchaser of such premises, for want of notice; but such purchaser's title shall be as valid as if procured in the life time of the mortgager: *Provided*, That any mortgager or mortgagers, his, her or their heirs or representatives, may at any time before the sale thereof, redeem any mortgaged premises, by the payment of the interest due, with all costs, if the sale be for the interest only, or by the payment of principal and all costs, if the same be due; and it is hereby made the duty of such commissioner, in all cases as above, on default in the payment of interest or principal of any school funds, in any way, to collect the same forthwith as in this act provided.

School lands exempt from tax, and taxes on mortgaged lands, how coerced.

SEC. 31. All school lands sold under this act, shall be free from taxation, either for state or county purposes, until the same be finally paid out, and when any mortgager under this act, shall fail to pay the state or county tax on any tract mortgaged, the proper collector shall first make such tax out of the personal estate, or other lands of the mortgager, but on failure to make such tax therefrom, the same shall be made by sale of the mortgaged premises, as other lands are sold for taxes, subject however to the mortgage thereon, and all costs about the same arising; and it shall be the duty of each collector, previous to the sale of any such lands for taxes in his county, to procure from the commissioner aforesaid, of his county, a statement of the mortgage money, the interest and costs thereon, which it is hereby made the duty of such commissioner to furnish.

Commissioner's office and deputy.

SEC. 32. Commissioners elected under the provisions of this act, shall keep their offices at their dwelling houses in their proper county, and in case of the sickness or absence of any such commissioner, his duties may in every respect be performed by a deputy, by him to be appointed, such commissioner and his securities being responsible for the acts of such deputy.

Vacancy in office of commissioner, how filled.

SEC. 33. In case of the death, resignation or removal from office of any such commissioner, the board doing county business in the proper county, shall appoint a successor, to be qualified in the same manner, and subject in all respects to the same liabilities.

Commissioner may sell at private sale.

SEC. 34. In all cases where any commissioner has offered for sale any school lands under the provisions of this act, and the same have been sold, said commissioner is hereby authorized and required, if application be made, to sell at private sale, to any person or persons applying therefor, at a sum not less than the minimum price fixed by the trustees of said section: *Provided, however*, That if several persons shall apply to said commissioner at the

same time, to purchase said land at the minimum price, he shall dispose of the same to the highest bidder.

SEC. 35. If any person shall forfeit any lands sold under the provisions of this act, he shall be liable for any damages he may have committed, by the unnecessary waste of timber; or any other materials, to be recovered by the proper school commissioner, by action of trespass, before any court of competent jurisdiction.

Damages for waste to land purchased.

SEC. 36. Purchasers of any school lands under this act, holding a certificate of such purchase from the proper commissioner, shall be, and they are hereby empowered, to take possession of such lands, (unless the same may be held by lease, and in that case, not until the expiration of such lease, except by agreement with the lessee thereof,) to recover for waste or trespass committed thereon, and in all respects to exercise all rights over the same, in as full and complete a manner, and under the restrictions of this act, as though a perfect and absolute title were vested in such purchaser.

Purchaser may recover for waste, &c.

SEC. 37. The township trustees elected according to the provisions of this act, shall within one month after their election, or if heretofore elected, within three months after the taking effect of this act, proceed to divide their townships respectively, into such number of school districts, as will be necessary for the inhabitants thereof, particularly describing the lands of each, and in such manner as to include all the territory contained in such township, in one or other of such districts; and upon doing so, shall also appoint three sub-trustees in each district so formed, whose duty it shall be after having received a written notification of their appointment as such, containing a plain and full description of the bounds of their respective districts, signed by such township trustees, and attested by their clerk, to appear before some person authorized to administer oaths, and severally take an oath or make affirmation, faithfully to perform the duties of their appointment, according to the best of their abilities.

Trustees shall form school district.

Sub-trustees and their duties, oath, &c.

SEC. 38. The above named sub-trustees shall, within thirty days after their appointment, proceed to call a meeting of the inhabitants, who may be freeholders and householders, within their respective school districts, at some convenient place therein, as near the centre as may be, and after making known to such meeting, the law on the subject of township schools, shall proceed to take the sense of the meeting by ayes and noes, in writing on the question, whether they will or will not support a public school for any number of months, not less than three in each year, on the plan herein proposed; and such sub-trustees shall transmit a concise copy of such decision, to the clerk of the

Sub-trustees shall call meetings relative to supporting schools, &c.

township trustees, whose duty it is hereby made, to record the same, in a book to be kept by him for that and other records, to which he shall make out and keep a fair index; and if upon examination, it appear that a majority of all the freeholders and householders in such district, are in favor of supporting such school, the sub-trustees shall next determine upon a suitable site for a school house, as near the centre of such district as possible, taking into view its convenience to water, fuel, and its healthiness, and as soon as a site is determined on by such sub-trustees, they shall appoint a time for the inhabitants thereof to meet and commence the building of a suitable school house, for the accommodation of as many pupils as may possibly at any time attend such school; said house to be of brick, stone, hewn timber or frame, according as a majority of such inhabitants may agree, the building and completion of which, to be superintended by such sub-trustees. Every able bodied male person, of the age of twenty one years or upwards, being a freeholder or householder as aforesaid, shall be liable equally to work one day in each week, until such building may be completed, or pay the sum of fifty cents for every day he may so fail to work, and every person being so liable, failing and refusing, after being duly called on by such trustees for that purpose, either to perform the work by himself or some sufficient substitute, or pay the equivalent aforesaid, shall after the third refusal so to do, be sued by such sub-trustees before any justice of the peace in the proper township, and on judgment being obtained against such delinquent, such trustees may sell, transfer, and dispose of the same, for any materials necessary for the carrying on of said building: *Provided*, That such delinquent shall have the privilege of discharging such judgment, previous to any sale, assignment or transfer thereof, by furnishing for the use of such buildings, such materials as the trustees will receive at cash price: *And provided, moreover*, That the said trustees shall always be bound to receive any such materials as are wanted about such building.

Who shall perform work on school house.

Suit for failure.

Dimensions of school house, &c.

SEC. 39. All school houses built as aforesaid, shall be at least eight feet between the floors, and at least one foot from the surface of the ground to the first floor, and furnished in a manner calculated to render comfortable, the teacher and pupils, with a suitable number of seats, tables, lights and every thing necessary to the convenience of a school; which shall be ever open for the education of all children in the district, without distinction.

List of inhabitants, &c.

SEC. 40. Such sub-trustees shall keep a just and regular entry of all their proceedings, together with a list of all the

male inhabitants by name, within their respective districts, to be kept by noting in a separate and distinct column, such as are free-holders, the quantity of land held by each, the quantity improved, and also the number of children between the ages of five and twenty one years, and make report thereof to the clerk of the township trustees, at any time when required so to do, which shall be filed and kept by such clerk, for the purpose of being referred to when necessary; and the inhabitants of such district are hereby required, when called on by such trustees for that purpose, to furnish true statements of all such matter under the penalty of forfeiting five dollars for every refusal or false statement, knowing the same to be false, to be recovered by action of debt, before any justice of the peace, for the use of the school therein.

SEC. 41. In all cases not expressly provided for by this act, the sub-trustees shall act under the direction of the township trustees, and shall be accountable to them for any mal-conduct in the discharge of their duties, and in case of any complaint made to the township trustees, or the clerk in vacation, by two or more inhabitants of any school district, charging any sub-trustee with mal-conduct in his office, it shall be the duty of the clerk to notify such trustee so implicated, to attend at the next meeting of the township trustees, and answer to the matters and things whereof he stands charged, which notice shall be directed to and served by some constable of the county, or any other person said clerk may appoint for that purpose, who shall make due return thereof accordingly; and if upon a hearing of the case, it appear that such charge or charges are satisfactorily supported by good and sufficient proof, and that the matters so alleged and proved, are likely to produce serious injury to the district or the party complaining, said sub-trustees shall be removed from office by the township trustees, and be liable to prosecution for mal-conduct in any court of competent jurisdiction, at the suit of such township trustees, in the name of the corporation; but if such charges, in the opinion of such township trustees, shall not be sustained, the party complaining shall forfeit and pay, for the use of such corporation, the sum of five dollars, to be recovered before any justice of the peace in the proper county.

SEC. 42. When any such school house shall be finished, the trustees of the district shall notify the township trustees thereof, who shall immediately repair to the place, and examine such school house, numbering and naming the same; and the first school house that shall be completed in such township, shall have preference in number, and the others in the order in which they shall be finished, which num-

Sub-trustees subject to trustees and their liability for mal-conduct, &c.

Sub-trustees may be removed from office.

Township trustees shall examine school house, &c. when built.

ber and name shall be recorded in the record book of the township, by the clerk thereof, and the said township trustees shall then and there determine, whether or not the said house is in good order, and fitted for the reception of a school, and if they should determine it not to be, they shall thereupon give such further directions concerning it, as are necessary; and thereupon said district sub-trustees shall forthwith proceed to make such alterations as are required; and all repairs that may be necessary from time to time, shall be made in like manner, by and under the direction of the township trustees.

How money
tax may be
raised.

SEC. 43. So soon as any district shall have any school house in readiness, and are desirous of having a school therein, the trustees of such district shall call a meeting of the voters thereof at such school house, and take the sense of such meeting whether they will suffer any proportion of the tax, if any tax be necessary for the support of such school, to be raised in money, and if so, what proportion, and the time they may wish to employ a teacher; and such trustees shall transmit in writing a copy of such determination to the clerk of the township trustees, to be by him recorded. They shall also make out a list of all the taxable property within their district, with the valuation thereof annexed, together with the names of the persons owning the same, which list shall be certified to the clerk of the township, and be by him filed: *Provided*, That no person shall be liable for such tax, unless such person wishes to and does participate in the benefit of such school fund.

Teacher, how
employed and
his qualifica-
tions.

SEC. 44. When the district trustees shall have performed the duties enjoined in the two foregoing sections of this act, they shall proceed to employ a teacher on the most advantageous terms that they can, contracting to make payment at the expiration of the term contracted for, in such articles, and otherwise, in such way and manner as may comport with the decision and determination of the inhabitants of such district; a copy of which contract the said district trustees shall forthwith transmit in writing, to the clerk of the township trustees, to be by him recorded, and such recorded contract shall thenceforth be binding on all parties: *Provided, however*, That no person shall be employed as a teacher as aforesaid, until he shall produce the certificate of the township trustees, that they have examined him touching his qualifications, and particularly, as respects his knowledge of the English language, writing and arithmetic, and that in their opinion, he will be a useful person to be employed as a teacher in said school.

How school
money shall

SEC. 45. Every teacher so employed, shall keep a regular and just entry of all the scholars that attend such school

at each day of the term, and at the close thereof he shall divide the sum total of all the attendance of all his pupils, by the number of teaching days in such term, and certify the same to the district trustees, who shall transmit a copy of said certificate to the clerk of the corporation, who shall compare all the certificates of the several districts in the township, and make out the exact proportion they bear to each other, having reference to the time each district has supported a school therein, the number of pupils taught, and give to each board of district trustees, a draft upon the trustee of the township corporation, for the proportion so made out to each district, of all money or property in his hands, arising from the rents, issues and profits of the reserved section of land within such townships, or of the interest arising from monies placed in the state loan office for the use of schools; which draft shall be a sufficient voucher for such treasurer.

be apportioned and drawn from loan office.

SEC. 46. Such treasurer shall be appointed by the township trustees, and shall be one of their own body, and all rents, issues, profits and interests, arising from school lands or monies, or from any other source, shall be placed in his hands, under the direction of such trustees.

Township treasurer.

SEC. 47. In all cases where it shall be found that the money or property in the hands of the township treasurer, covered by the draft of the township trustees, as directed in this act, is not sufficient to fulfil the contract made by the district trustees, to certify to the clerk of the corporation, the amount required to fulfil such contract; and it shall be the duty of the clerk aforesaid, to apportion the amount so required, among the several persons on the list certified by such district trustees, agreeably to the valuation annexed as aforesaid, and deliver the same to the district trustees aforesaid, who shall give notice to each person so taxed, of the amount due, together with the articles of property that will be received in payment, and at what place within the district the same may be delivered, as also the price allowed for each article, either by weight or measure: *Provided*, That in no case shall the clerk of the corporation, in making the apportionment aforesaid, charge any person with a larger sum in one year, than one fourth per centum upon the value of his property so listed.

Deficit in township treasury, how supplied.

Tax limited.

SEC. 48. The district trustees, within twenty days after having notified every person taxed in the district as aforesaid, by giving them a personal notice, or by leaving a written notice at his, her or their place of residence, to deposit with some justice of the peace of the township, the list of apportionment so made out as aforesaid, and also a list of the money of those who had paid the amount of their tax-

Sub trustees shall notify persons taxed, and how taxes shall be collected.

es; and it shall be the duty of the justice, after examining the two lists aforesaid, to proceed to collect the amount due from each person so taxed, and such list or apportionment, so deposited with such justice, shall be evidence of the amount due, from each person taxed as aforesaid; and when so collected, the justice shall pay the same over to the district trustees of the proper district.

Township trustees may lease unsold section and their powers generally.

SEC. 49. The township trustees elected by virtue of this act, shall have power to lease the reserved sections in their respective townships, so long as they may remain unsold, for any term of years not exceeding eight years, upon such terms and conditions, and for the payment of such rents, either in cash, grain or improvements, as they may think most advisable. They shall have the superintendence of such lands, power to prevent waste and damage to the same, and to sue therefor, to enforce the payment of rents by distress or suit, and to coerce the fulfilment of the conditions of all leases, to draw annually upon the superintendent of the loan office as provided in the twentieth section of this act, for the interest arising on monies of their township, and also upon the commissioner of school lands in the proper county, for the interest on loans made for the use of schools in such township, entering copies of such drafts of record on their township school books, which draughts the said superintendent and such commissioner are hereby ordered to pay, and annually to make a dividend of all rents and profits, and interest arising on school lands or monies, by them collected; in equal proportions, among the several schools established in their respective townships, including those which have been or may hereafter be organized under an act of incorporation, agreeably to the number of scholars in each; and if there shall not be more than one school established in any township, the whole amount of rents, profits and interest aforesaid, accruing for school purposes in said township, shall go to the support of that school, until others are established.

Township trustees shall report annually to county board, and may be removed from office.

SEC. 50. Township trustees elected or appointed by virtue of this or any former act, shall annually report in writing the situation and amount of rents and funds arising for the use of schools in their respective townships, to the proper boards doing county business, at their January session; which report shall be recorded by the clerk of said board, in a book to be kept for that purpose, at the expense of the county, and said trustees shall in all cases be amenable to such boards, for the faithful and honest discharge of their official duties, and may be removed from office by said boards, for neglect of duty or malfeasance in office, on the information of any five freeholders of the proper township,

sufficient proof being made to said boards, of such neglect or mal-feasance.

SEC. 51. In case the qualified electors of any township, shall fail to elect trustees as required by this act, the board doing county business in the proper county, shall appoint trustees therein, who shall hold their offices for the term prescribed to those duly elected, subject to the same duties, regulations, restrictions and penalties; and in case of the death, resignation or removal from office, of any such trustee, the vacancy occasioned thereby shall be filled by such board, and certified by the clerk thereof to the person appointed.

Trustees may be appointed by c'ty. board.

SEC. 52. It shall be the duty of commissioners of school funds, and township and district trustees, who may be elected or appointed under the provisions of this or any former act, to keep records in proper books, of all their proceedings, which books and records shall always be subject to the examination and inspection of the boards doing county business in the several counties in this state.

Commissioners shall record their proceedings.

SEC. 53. The township trustees, may at any time direct the school commissioner, not to loan the interest arising from the school funds of their township; which notice shall be sufficient authority for the commissioner not to loan such interest.

Township trustees may direct commissioner not to loan money

SEC. 54. That in all cases where money shall have come to the hands of any trustee of a congressional township, before the taking effect of this act, and the inhabitants of said township determine in favour of the sale of their school section, it shall be the duty of such trustee to pay such money to the commissioner mentioned in this act, for the use of such township, to be appropriated in the same manner as money arising from the sale of said school land; and said school commissioner is hereby invested with power to demand and collect the same, in his own name, for the use aforesaid.

Trustee shall pay over money to commissioner.

SEC. 55. If a majority of all the freeholders and householders in any congressional township, shall determine not to sell their school section, as provided in this act, but that they wish to lease the same for a term of time longer than is otherwise allowed in this act, so as to secure an annual rent, the trustees of such township, are hereby authorized to lease the same, for an annual rent, to be paid each year in advance, for such term of time, and on such conditions, as they shall deem best calculated to promote the interest of schools in such township, and to apply the rent, together with all other rents and interest in their hands, or due, to support schools in the several school districts in their township, in equal proportions to the number of scholars that shall be taught in each school; and for the purpose of encouraging the inhabitants of each district to erect school

Trustees may lease school section upon a vote, for any term and apply rents to support of schools, &c.

Inhabitants may furnish materials for school houses, &c.

houses, they are hereby authorized, if they have school funds on hand and they should deem it proper, to furnish nails, glass, plank, shingles and other materials in equal proportion to each district, to aid in such building; and they are hereby authorized and required to collect all rent and interest due, as soon as in their discretion it shall be necessary, and for that purpose, if necessary to sue for the same in the corporate name of their township; and no statute shall be pleaded in bar of such demand, if proof be made that the claim is justly due.

Trustees need not call for a vote for a tax unless requested, &c.

SEC. 56. All trustees heretofore elected, who are now in office, and all trustees hereafter to be elected, by authority of this act, shall be governed in all respects by its provisions: *Provided however*, it shall not be necessary for the trustees of any district, to call a meeting of the citizens of such district, to propose a tax for the support of schools, unless previously requested so to do, by at least twenty householders of the proper district; nor shall any distribution of the school funds be made in any township, so as to deprive any school district of their proportion, until in the opinion of the trustees, they have had a reasonable time to build a school house, taking into consideration their abilities to build, together with the means the trustees are willing to afford them out of the school fund, if the district trustees shall procure a suitable building, to be judged of by the trustees of the township, and shall establish a school in such district.

No school district shall be deprived of its portion of funds, unless, &c.

Trustees may loan money on hand.

SEC. 57. In all cases when the trustees have school funds on hand for which they have no immediate use, for the support of schools, they may let it out on interest, they and their securities being accountable for the same.

CHAPTER LXXXVII.

An Act for the appointment of Trustees to receive deeds for Lots or Lands, given or purchased for the use of Schools, Meeting Houses or Masonic Lodges.

[APPROVED, FEBRUARY 10, 1831.]

How trustees to receive deeds shall be elected.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever any congregation, religious society or church, shall be desirous of procuring or receiving by gift, grant, donation or purchase, any lots or lands, not exceeding in quantity one hundred and sixty acres, for the purpose of erecting thereon any school or meeting house, it shall be lawful for such congregation or society, or a majority of them, to meet at some public place, in the neighbour-

hood of such church, society or congregation, after having given ten days notice thereof, either at the usual time and place of public worship, by advertisements set up at three public places in the vicinity, or by notice in some public newspaper printed in the county, and then and there proceed to the election of not less than three nor more than five trustees, a majority of whom shall be capable of receiving a deed or deeds for such lots or lands so acquired by gift, grant or purchase, for the use of such church, society or congregation, who shall continue in office for one year after their election, and until their successors are elected; and the clerk of such election, shall within ten days thereafter, deposit in the recorder's office of the county, where such lots or lands may lie, a certificate of the election of said trustees, which such recorder shall immediately record in some book in which deeds are recorded; and the lots or lands so deeded, by gift, grant, donation or otherwise, to the trustees aforesaid, shall vest in them and their successors in office, for the sole use and benefit of said society, church or congregation forever, all the right and title to such lots or lands; and when any lot or lots of ground as aforesaid, shall be within the bounds of any incorporated town, such society, church or congregation, shall not establish any grave-yard thereon: *Provided however,* That after the first election which may be held by such church, society or congregation, after their organization, a majority of those who shall actually attend any annual or stated meeting thereof, shall be authorized to proceed to elect the trustees as before provided for, and may adopt such rules and regulations for future elections, and for conducting business, as they may deem expedient, not inconsistent with the constitution and laws of this state or of the United States.

SEC. 2. The trustees elected in pursuance of this act, or chosen in pursuance of the rules which may be established by such church, congregation or society, after such election shall have been recorded in the recorder's office as above provided for, shall have full power and authority, to receive conveyances of lots or lands, whether the same be by gift, grant, donation, purchase or otherwise, for and on behalf of their respective societies, and to and for the sole and exclusive use and benefit of the same, within the true intent and meaning of this act, not exceeding in amount the quantity of one hundred and sixty acres aforesaid, which shall be held by them and their successors in office, in perpetuity, for the purposes aforesaid, and shall also be and they are hereby authorized to acquire and hold personal property, not exceeding in amount the sum of five thousand dollars, for like purposes; and where they shall deem the same necessary and proper, to appropriate their funds to the main-

Notice of election.

Three or five trustees.

Term of office.

Certificate of election to be filed and recorded.

Effect of deed.

Cemetery in towns prohibited.

Proviso.

May make rules.

How trustees may take deed in trust. &c.

Limitation to 160 acres.

May hold personal property to \$5000, and how appropriated.

May sell or
lease their
corporate
property.

Corporate
powers.

Proviso.

Donations
made previous
to this law,
governed by
the same rules.

Masonic lodg-
es.

tenance of religious worship, grave-yards, schools and libraries, and to the erection of all buildings, and providing all conveniences requisite thereto; and in furtherance of such objects, may sell, lease or otherwise dispose of, any of their corporate property so acquired, and a sale and conveyance by such trustees or a majority of them, on behalf of their respective societies, shall vest in the purchaser or purchasers, all the right and title of said society, church or congregation, of, in and to the same; and by the proper name of their respective societies, churches and congregations, may appear in all courts and places, to prosecute and defend on behalf of the same, the rights hereby granted: *Provided however*, That this section shall not be so construed, as to affect any donations heretofore given, but such donation shall be conveyed and disposed of, agreeably to the intention of the original donor under the provisions of this act.

SEC. 3. Any religious society, the inhabitants of any school district, or any congregation whatever, that previous to the passage of this act, may have received any lot or tract of land, not exceeding five acres, by donation or purchase, for the purpose of erecting on the same, a house of religious worship, a school house, or other building appropriated to such congregation, and may be desirous of holding the same in perpetuity, by trustees, as prescribed in this act, are hereby authorized and empowered so to do, on having first obtained the consent thereto, of at least two thirds of the persons interested in such lot or tract of land, and elected trustees, and caused the certificate of their election to be recorded in the recorder's office of the proper county, agreeably to the provisions of the first section of this act; upon which the fee simple of such lot or tract of land, shall be vested in the said trustees, and their successors in office for the use and benefit of their said society, district or congregation, as the case may be, as fully in every respect, as if the same had been made to them in trust, in the first instance; and said trustees of such religious society, school district or congregation, shall have the same rights and privileges, in and over such lot or tract of land by them so held, and be subject to all and any of the provisions of this act, relative to trustees in other cases; any law, usage or custom to the contrary notwithstanding.

SEC. 4. That the rights, privileges, benefits and immunities, hereby granted and extended to congregations and religious societies, are hereby granted and extended to the grand lodge of Indiana, and to the several lodges which now are or which may hereafter be subordinate to the said grand lodge.

SEC. 5. The said grand lodge of Indiana, by the name and style of the grand master, deputy grand master and

wardens of the grand lodge of Indiana, and the lodges which now are, and may hereafter be subordinate to the said grand lodge, by the name and style of the master and wardens of lodge No. —, taking to themselves such name and number as have been, or may be assigned to them, by the grand lodge of Indiana, shall be able and capable in law to purchase, have, hold, receive, enjoy and retain to themselves in perpetuity, or for any term of years, any lands, tenements or hereditaments, of what kind or nature soever, not exceeding in real estate one acre of ground, together with the improvements thereon, and of personal estate, not exceeding the sum of five thousand dollars; and to sell, alien or lease the same, as they or each of them may think proper.

SEC. 6. The same powers, rights, privileges and immunities, which are by this act conferred on, and extended to the said subordinate lodges, are hereby extended to, and conferred on each and every chapter of royal arch masons, now established in this state, or which may hereafter be established, according to the principles of royal arch masonry.

Similar powers extended to chapters of royal arch masons.

SEC. 7. Where any congregation, religious society, masonic lodge, or inhabitants of any school district, shall have elected trustees in conformity to the provisions of this act, and such association shall have been dissolved, by the death, resignation or removal of its members, a majority of those persons interested, may within five years after such dissolution, proceed to elect a new board of trustees, in conformity to the provisions herein contained: *Provided however,* That any religious society, with the consent of a majority of its members, may select or appoint trustees, according to the common usage or custom of said society; and the names of the trustees so appointed, shall be certified to the recorder of the county, in the same manner as if an election for trustees had taken place.

On dissolution of society, it may be revived and how.

Proviso, trustees may be elected according to custom. &c.

SEC. 8. That the new board of trustees elected as aforesaid, and also any board of trustees appointed by any religious society, as provided for by the proviso to the last section of this act, shall be vested with the same powers, and do and perform all acts and things, which by the provisions of this act, trustees could legally do and perform.

New trustees vested with the powers of the old.

SEC. 9. That it shall be the duty of the trustees who may be elected or appointed as last provided for, within ten days after their election or appointment, to produce to the recorder of the proper county, a certificate of their election or appointment, as the case may be, and such recorder shall immediately record the same, as provided for in the first section of this act.

Certificate of new trustees.

CHAPTER LXXXVIII.

An Act to establish a Board of Trustees for the promotion of Schools and Education in Clark's Grant.

[APPROVED, JANUARY 28, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the circuit court of Clark county be, and they are hereby authorized and required, at the first term of said court after the taking effect of this act, to lay off the tract of country commonly called Clark's Grant, into seven school districts, as nearly equal as practicable, numbering the same, and order such districting to be entered on the records of said court, and by their order to the sheriff of said county of Clark, direct him to notify the qualified voters resident in each of said districts, by at least three manuscript advertisements, to meet at such time and place in each district, defining the limits thereof, as said court may order and direct, then and there to elect by ballot, some suitable person resident therein as a trustee: the said court shall also appoint some suitable person in each of said districts, as inspector of such election, who with two assistants and a clerk to be chosen by him, shall under their oath, hold and make return of such election, to the clerk's office of said court, in such manner, and at such time, as said court may order and direct.

Circuit court
to lay off
Clark's grant
into school
districts.

Trustee to be
elected for
each district.

Bond.

SEC. 2. The trustees, when elected as aforesaid, shall, within twenty days after the time appointed for the return of such election, enter into bond with sufficient security to be approved of by the clerk of the circuit court aforesaid, made payable to the state of Indiana, to and for the use and benefit of the people of said grant, in the penal sum of five thousand dollars each, conditioned for the faithful performance of his duty, as trustee as aforesaid, and for the true accounting for and paying over all monies, or other commodity, which may come into his hands in consequence of said appointment, in such manner as may be directed by law.

SEC. 3. The trustees when so chosen and qualified as aforesaid, may hold their appointments for five years, and until others are chosen, and give bond as aforesaid, unless removed by an order of the circuit court aforesaid; for improper conduct as such, on a suggestion or petition of five respectable citizens of the proper district, when said court may think it necessary; and in case of removal of any trustee, elected under authority of this act, or refusal to serve, the remaining trustees shall order an election to fill such vacancy, and a return thereof shall be made, and qualification of the person elected, shall be had in like manner, as

Term, 5 years.

Vacancy, how
filled.

provided in the first section of this act; and at the expiration of each term of five years from the day of the first election, a new election for trustees shall be holden, notice of which shall be given by the sheriff of the county of Clark aforesaid, by advertisements in each district, as provided in the first section of this act, and if no inspector be appointed, or if appointed shall fail to attend at the place of holding the election, in any of said districts, by the hour of ten o'clock, on the day of election, the voters present, may choose a suitable person to act as inspector of such election.

SEC. 4. Said trustees or a majority of them, after giving bond as aforesaid, shall meet at Charlestown, in the said county of Clark, on some day most convenient to them, within three months after their election, and shall by ballot, elect one of their number as president, who shall take his seat and form a board, which board, when so formed, shall proceed to appoint some suitable person as clerk to their board, who shall give bond and security to said president and trustees, in the sum of five hundred dollars, conditioned well and truly to discharge the duties of his office, and shall keep a book, in which a correct entry of all meetings and proceedings of said trustees shall be made, together with a copy of the record of said circuit court, respecting the said school districts, which said record book shall be kept by said clerk at Charlestown, to be open for the inspection of persons interested therein.

Trustees meet
at Charles-
town and form
a board.

SEC. 5. After the said trustees shall have so as aforesaid formed themselves into a board, and recorded the same on their record book, they shall be to all intents and purposes a body corporate and politic, under the name and style of "The President and Trustees for the promotion of schools and education in Clark's Grant," until the legislature may deem it expedient to vest their trust in other hands; and by that name are hereby made able and capable to all intents and purposes whatever, both in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or place whatever, and to make, have and use a common seal; and for the purpose of promoting schools and education within the districts of said Clark's Grant, shall be able and capable to all intents and purposes, both in law and equity, to have, purchase, receive, possess and retain to them and their successors in office, lands, tenements, rents, issues and profits, goods and chattels, bank, treasury or other stock, monies and effects of any kind or nature whatever, and the same at pleasure to transfer and dispose of for the purposes aforesaid.

Body corpo-
rate.

Seal.

Hold lands,
&c.

SEC. 6. The said president and trustees shall hold all their sittings at the said town of Charlestown, shall meet

Meet once a
year.

Determine the disposition proper to be made of school lands.	once a year, and at such other times as they may resolve or be requested by the president or two trustees, and shall at their first meeting, or as soon thereafter as expedient, determine by ballot, whether in their opinion, the purposes for which six sections and a half of land, located in pursuance of an act of congress, entitled "An act authorizing the location of certain school lands in the state of Indiana," approved the 7th day of May, 1822, situate in the district of lands offered for sale by the United States at Brookville, would be best advanced by the sale thereof, and the proceeds vested in lands within the limits of Clark's Grant, or in the purchase of stock, in the funded debt or bank of the United States, or loans to individuals, or by giving leases on the land now selected; and the determination so made shall be entered on their record book; and if it be determined to dispose of those lands, and vest the proceeds in either manner before mentioned, they shall authorize the president of their board, to make application in writing, under the common seal of the corporation, attested by their clerk, to the commissioner of the general land office of the United States, for a patent to them, the said president and trustees, in the said corporate name and capacity, and to their successors in office, for the said six sections and a half of land aforesaid, and shall therewith forward a copy of this act.
Application for a patent.	
Trustees point out the manner of selling land.	SEC. 7. And when the said president and trustees shall have received a patent as aforesaid, for the said lands, they shall by ordinance, point out the manner and way of selling the same, for the best possible price, but the same nor any part thereof, shall not be sold for a less price than one dollar and twenty-five cents per acre, and a copy of such ordinance shall be recorded on the records of Clark county; and the said trustees on a sale thereof, shall make to the purchaser or purchasers a deed in their corporate capacity, and
Deed.	
Vest proceeds of sale, in lands in Clark's grant in bank of United States.	may, at their discretion, vest the proceeds of such sale, in the purchase of lands within the limits of Clark's Grant, to which good and sufficient titles can be made, or in the purchase of stock, in the public funded debt, or bank of the United States, or loan the same to individuals, upon good real security, by mortgage or deed of trust. And the proceeds of the sale of said lands, shall forever be and remain a permanent fund, for the promotion of schools and education within said Grant, the interest and profits only, arising therefrom, to be appropriated for that purpose, in such manner as the said president and trustees may direct, which may also be put at interest, until the amount be sufficient to authorize the distribution thereof.
School fund.	
Lease lands.	SEC. 8. The said president and trustees shall have power to lease all lands, which have been or may hereafter be

granted or conveyed, for the purposes of promoting schools and education within said Grant, on such terms as they may deem proper and expedient, and to prosecute for trespasses or waste thereon, and do and perform such other matters and things, in relation thereto, as the trustee of other school sections is or may hereafter be authorized by law to do, and agents under them to appoint, and at pleasure to remove.

SEC. 9. The violation of any of the duties required of said trustees, by this or any future act, by which the aforesaid fund shall sustain loss or injury, shall be deemed a violation of the condition of their bond, and suits shall be sustained by bill in equity, in the Clark circuit court, against the trustee guilty of such violation, and his securities; and the said court shall have superintendence over the conduct of said trustees, and require them to render an account of their proceedings, as often as they may deem it necessary, and enforce them to deliver over to their successors in office, the funds and documents belonging to, or concerning their said trusts.

Proceedings
against trustees for
neglect of duty.

Render account.

SEC. 10. The necessary expenses for carrying into effect the provisions of this act, shall be paid out of the county treasuries of Clark, Floyd and Scott counties, in proportion to the quantity of Clark's Grant within each of said counties, to be allowed by the board of county commissioners of the proper county, and paid by the treasurer, on the order of the president of said board of trustees.

Expenses,
how paid.

CHAPTER LXXXIX.

An Act concerning the Secretary of State

[APPROVED, JANUARY 19, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the secretary of state, in addition to the duties enjoined on him by the constitution, shall affix the seal of the state to all public instruments, to which the governor's signature now is or may hereafter be required by law.

Secretary shall affix
state seal to
governor's official acts.

SEC. 2. That all obligations which now are or hereafter shall be required by law to be given to the state, (except in cases otherwise provided for by law) for the faithful discharge of any office, commission or public trust, and the sureties therein to be approved of by the governor, shall be taken by the secretary of state, for the uses and purposes therein respectively expressed, and recorded in his office;

Bonds to the
state, shall be
taken by secretary and
recorded.

Authenticated copies to be evidence.

and copies of such obligations, duly authenticated under the seal of such office, shall be admitted as legal evidence, in any suit or suits, that may or shall be brought against such obligors or their securities.

Secretary shall preserve acts, permit inspection of his office and furnish abstracts, &c.

SEC. 3. That the said secretary of state shall keep and preserve all acts passed by the general assembly, and shall permit the books, papers, accounts and transactions of his office, to be at all times open to the inspection and examination of committees of either branch of the general assembly, and shall furnish such copies or abstracts therefrom, as may from time to time be required.

Secretary's bond.

SEC. 4. That the said secretary of state shall give bond to and for the use of the state of Indiana, in the penal sum of two thousand dollars, with sufficient security, to be approved of by the governor, conditioned for the due and faithful performance of the several trusts to him committed; which shall be duly acknowledged and deposited by the governor, in the recorder's office of the county in which the seat of government is fixed, and there recorded; and a copy of such obligation, from the records of said recorder's office, shall be admitted as legal evidence, in any suit or suits that may or shall be brought against such secretary or his securities.

Bond to be recorded.

Shall keep branding iron, brand state property, &c.

SEC. 5. That the secretary of state is hereby required to keep at the expense of the state a proper branding iron, on which shall be engraved the Roman capital letters P. S. I. (meaning the property of the state of Indiana) and shall well and sufficiently brand with said iron, all chairs, desks, tables, and other moveable wooden furniture now owned or which may be hereafter procured by the state of Indiana, on some conspicuous part thereof. And such branding iron shall be preserved in the office of the secretary of state, for such like purposes.

Shall preserve state furniture, register the same, &c.

SEC. 6. That it shall hereafter at all times be the special duty of the secretary of state, to collect together in some proper place, all the chairs, desks, tables, inkstands, ink-bottles, candlesticks, sand boxes, and all other moveable property and furniture belonging to the state, and cause the same to be taken care of at all times, except when the general assembly may be using the same; and it shall moreover be the duty of said secretary, to keep a book in which he shall register all and singular, the number, name and description of the aforesaid articles of property.

Shall keep a register of executive correspondence.

SEC. 7. It shall further be the duty of the secretary of state to keep a complete register of all the official letters and correspondence, to, from and with the executive department of the state, in a sufficient, durable and well bound book, to be kept for that purpose. And he shall annually make a proper index, and full and sufficient marginal notes, to all the acts, joint resolutions and memorials of the gene-

Shall copy the acts for the state print-

ral assembly, furnish the public printers with correct copies of all such acts, joint resolutions, memorials, index and marginal notes, in due time for printing the same; and shall duly superintend the printing, and correct the proof sheets of all such printing; and when such acts, joint resolutions and memorials, are printed and made ready for distribution, the said secretary shall forthwith, in a proper and sufficient manner, pack up the same, together with the journals of the senate and house of representatives, and deliver the same when so packed, to the distributors for distribution; and the said secretary shall, without delay, affix the official seal of the state to all reprieves, pardons, remissions of fines, penalties and punishments; and shall also perform all other duties which may, from time to time, be imposed on him by law.

ter, make indexes & notes thereto, and deliver them for distribution.
Shall affix state seal to pardons, &c.

SEC. 8. The secretary of state shall be and he is hereby allowed the annual salary of six hundred dollars, payable quarterly by warrants drawn on the treasurer, by the auditor of public accounts; and such annual salary shall be, and is hereby declared to be, in full for all services rendered and to be rendered by such secretary of state; and that he shall not receive either perquisites or fees for any of his services as such secretary, except such fees as may be allowed him in the act regulating fees.

Secretary's salary.

SEC. 9. That whenever the secretary of state shall, by reason of sickness, necessary absence, or inability, be prevented from discharging the duties of his office, his deputy or deputies, lawfully appointed under his hand and seal, shall and may execute all the duties which the said secretary could have lawfully executed in person till such disability be removed, and it is hereby made the duty of the secretary, by himself or his deputy or deputies, to attend at his office each day in the year, Sundays excepted, from the hour of ten until three o'clock.

Secretary may appoint deputy.

Office hours.

CHAPTER XC.

An Act relating to County Seminaries.

[APPROVED, FEBRUARY 4, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the boards doing county business in the several counties in this state, (except as hereinafter provided,) shall, at their first session in each year, appoint some proper person, as trustee of the county seminary in their respective counties, which trustee shall hold his office for the term of

County board shall appoint seminary trustee, and his term of office.

one year, and until his successor is appointed and qualified, and no longer, unless re-appointed.

Oath & bond
of trustee.

SEC. 2. Said trustees, before entering upon the duties of their respective offices, shall make oath or affirmation, before some person legally authorized to administer oaths, faithfully to discharge the duties of their respective offices, according to law, and shall moreover give bond with security, to be approved of by the boards doing county business, payable to the state of Indiana, for the use of the county seminaries therein, in the penal sum of double the amount, as near as may be, of the seminary funds in such counties, conditioned for the faithful performance of all the duties enjoined on them by law, and for paying over all monies, and delivering over all books, papers, bonds, bills, notes and effects, which may come into their hands, as trustees as aforesaid, to their successors in office, at the expiration of their term of service; which bonds shall be filed with the clerks of said boards doing county business, and by them recorded, and may be put in suit from time to time, until the whole penalties thereof may be recovered.

Bond to be filed with clerk and suit thereon.

Trustee shall demand monies & effects from predecessor, and for failure to deliver over suit by motion or in equity.

SEC. 3. Such trustees, when so appointed and qualified, shall demand of their predecessors in office, all monies, papers and effects appertaining to their said offices, and on failure or refusal of any such predecessor, to deliver up the same, when so demanded, suit shall be instituted therefor in the name of his successor, so as aforesaid appointed, against such delinquent; which suit may be by motion, (ten days notice thereof being given to such delinquent,) or by bill in equity, in the circuit court of the proper county; upon the hearing whereof, such court shall make such order and decree against such delinquent, as may be deemed just and equitable: *Provided*, That no such proceeding, shall bar a suit upon the bond of such delinquent and his sureties, for the same, or any other breach of duty.

Proviso.

Holder of seminary money shall pay over to trustee

SEC. 4. All officers in whose hands or possession there may now be, or hereafter come, any money or monies set apart for seminary purposes, are hereby required to pay over the same to the trustee of the seminary fund of the proper county, within sixty days after the receipt thereof, taking such trustee's receipt therefor, which receipt shall be filed by such officer with the board doing county business in the proper county, and recorded by the clerk of such board.

Clerks & justices shall report to county board statements of fines, &c.

SEC. 5. It shall be the duty of clerks of the circuit court, and all justices of the peace within this state, to make reports in writing to the boards doing county business in their respective counties, at the first session of said board, annually, setting forth clearly and succinctly, the names of all persons against whom fines have been assessed the preceding year, together with the amount and cause thereof, in said

circuit courts, and before said justices, which reports shall be entered of record by the clerks of said boards.

SEC. 6. Should any officer in whose hands there now is, or may hereafter be, any monies set apart for seminary purposes, neglect or refuse to pay over the same to the trustee of the seminary funds of the proper county, according to the provisions of the fourth section of this act, such trustee shall without delay, institute suit therefor, by motion in the circuit court of the proper county, after giving such delinquent ten days notice of the intended motion, and the court before whom the same shall be tried, shall in addition to the principal and legal interest which appear to be due, give judgment for ten per cent. thereon, together with costs of suit, and also six per cent. thereon, for the use of the attorney prosecuting the same, upon which judgment there shall be no stay of execution.

Suit vs. officer withholding payment from trustee.

Notice and motion vs. officer.

Judgment and per cent.

SEC. 7. It shall be the duty of the several trustees of county seminary funds in this state, appointed under this act, annually to lay before the boards doing county business in their several counties, at their first session in each year, a full and complete statement in writing, of the state of such funds, exhibiting the amount loaned, expended and on hand; which report shall be entered of record, and filed by the clerk of said board. Every trustee of seminary funds, appointed by the board doing county business in any county in this state, shall submit all his books, papers and official transactions, to the inspection and examination of such board, whenever required, and shall be amenable to such board for the faithful and impartial discharge of his duties; and should any such trustee be found in any degree violating the trust reposed in him, such board shall have power to remove him from office and appoint a successor.

Trustee shall report to c'ty. board annually.

County board may inspect trustee's books & may remove him from office.

SEC. 8. It shall be the duty of the several trustees, appointed under the provisions of this act, to loan all monies paid to them as such, for the term of one year, at any rate of interest not less than six per cent. per annum, taking bond and good security therefor, payable to themselves and their successors in office; and said trustees and their securities, shall in all cases be held responsible for monies so loaned, with the legal interest thereon.

Trustee may loan money, being responsible.

SEC. 9. Such trustees are hereby empowered to prosecute suits against any and every person loaning money as aforesaid, so soon as the same shall become due, unto final judgment, upon which there shall be no stay of execution.

Trustee shall sue for money loaned.

SEC. 10. The said several trustees so as aforesaid appointed, shall have and detain in their hands respectively, as a full compensation for their services, one per cent. on all monies that may come into their hands, and no more.

Trustee's compensation.

SEC. 11. So soon as the seminary fund shall amount to

District trustees when to be elected, & term of office.

the sum of four hundred dollars, in any county in this state, the qualified voters thereof, may on any day of the general election in such county, and triennially thereafter, elect in each commissioner's district therein, one trustee of the seminary of such county; but no such trustee shall be considered duly elected, unless a majority of the voters, voting in such county at such election, shall have voted for trustees as aforesaid.

Oath & bond of district trustees.

SEC. 12. Such trustees, when so elected, as in the eleventh section of this act mentioned, before entering upon the duties of their offices, shall severally execute their bond, in the penal sum of one thousand dollars, with security, to be approved of by the clerk of the circuit court of the proper county, conditioned for the honest and faithful discharge of all the duties of trustees of the seminary of such county, which bond shall be made payable to the proper county, for the use of the seminary of learning therein. Said bond shall be filed with, and entered of record by the clerk of the board doing county business in such county, and may be put in suit as often as occasion may require, until the whole penalty thereof shall be recovered.

Bond to be filed and recorded.

District trustees, a body politic, and their powers and duties.

SEC. 13. Such trustees, when duly elected and qualified according to the provisions of the foregoing section of this act, shall form and constitute a body politic, with general powers and liabilities, similar to other corporations, subject however, to the peculiar object of its organization, under the name and style of "The Board of Trustees of the County Seminary of _____ County," subject always to the limitations and directions of the general assembly of this state.

Corporate style.

General powers of board of trustees.

SEC. 14. Said board, when so organized, shall be vested with all the right, title and interest, in and to all monies, bonds, notes, papers and effects of the county seminary of the proper county, and shall have power to hold real and personal property, for the use of a seminary of learning, to appoint a clerk, treasurer and other officers, being always responsible for their acts, and to do all other acts and things, not inconsistent with the constitution and laws of this state, necessary for the beneficial exercise of their functions.

Powers and duties of seminary trustee transferred to board of trustees.

SEC. 15. Such trustees, when so as aforesaid incorporated in any county, shall to all intents and purposes, in their corporate character, succeed to the trust vested in the seminary trustee appointed by the board doing county business therein, and may by bill in equity, in the circuit court of the county, coerce the delivery up of all books, papers, bonds, bills, notes, credits, monies and effects in the hands of such trustee, and obtain such other relief as to the court may seem just and equitable: *Provided*, That suit may also

be instituted on the official bond of such seminary trustee.

SEC. 16. Such board of trustees, in any county in this state, after being duly qualified, shall proceed as soon as practicable, to procure by purchase or donation, a suitable site whereon to erect an edifice for a public seminary in such county, securing a conveyance therefor in fee simple, by bond; which bond, together with a plat of such site, with the terms of such purchase or donation, shall, by such board of trustees, be laid before the board doing county business in such county, at its first session thereafter, and if approved of by said county board, it shall be deemed a *bona fide* contract and binding on both parties; and if such site be obtained by purchase, and sanctioned as aforesaid, such board of trustees shall discharge the amount of such purchase, out of any seminary monies in their hands.

Board of trustees may purchase land, erect seminary, make contracts, &c.

SEC. 17. Whenever the seminary fund in any county shall amount to four hundred dollars, after procuring a site as aforesaid, said board of trustees may contract for the erection of a suitable edifice upon such site, by letting the contract therefor, to the lowest bidder, after giving three weeks notice of the time and place of selling such contract, together with a plan of the proposed building, by publication in some newspaper, if any there be in such county, if not, by posting up written notices in six of the most public places in the same.

Board may contract for seminary edifice when the fund amounts to \$400, and how.

SEC. 18. Said board of trustees shall take bond and good security, with a sufficient penalty to cover all damages that may accrue by reason of the non-performance of the contract, from the person buying such contract, conditioned for the faithful execution of the work; which bond and contract shall be filed in the office of the clerk of the board doing county business in such county, and there entered of record.

Bond of contractor to build.

SEC. 19. Such board of trustees are hereby authorized to pay such contractor or contractors, out of any seminary monies in their hands, according to the terms of the contract; and on the faithful completion of said building according to agreement, to receive the same, which, when so received, shall be open and free for public schools, and in which shall be taught any branches of literature authorized by the trustees thereof.

Board shall pay contractor, erect building, &c.

SEC. 20. The board of trustees in all counties where seminaries have been established, or may hereafter be established, shall keep a complete record of all their proceedings in books, procured and kept for such purposes, always subject to the inspection and examination of the boards doing county business therein, and shall annually make a detailed report to said county board, exhibiting the true situation of their seminary, the debts and credits of such institution, the amount of money on hand, the number and charac-

Record of proceedings to be kept and report to county board made.

ter of the schools therein, and all other important facts connected with their operations; which reports shall be spread at length upon the records of such county boards.

City boards shall also record seminary reports.

Clerk shall annually make statement to prosecuting attorney, who shall forward a copy to the speaker of the house of representatives.

Board of trustees may loan money.

Board of trustees may collect debts as seminary trustee might.

A majority of the board may act.

Seminaries shall be permanent.

Triennial elections of trustees and their powers.

Former acts of seminary trustees legalized.

Board of trustees may make by-laws

SEC. 21. The boards doing county business in all counties where there may be now or hereafter, any seminaries established under the provisions of this or any other act, shall keep proper books, in which shall be entered and recorded, all reports and proceedings connected with such seminaries; and it is hereby made the duty of the clerks of the several boards doing county business in such counties, to present to the prosecuting attorney therein, at the fall terms of the circuit court annually, a complete statement of the situation of such seminaries, so far as they are enabled to do it, from their records, a copy of which statement shall be transmitted to the speaker of the house of representatives by said attorney.

[SEC. 22. All monies in the hands of any board of trustees incorporated as aforesaid, not used in the erection and support of the seminary of their proper county, shall be loaned upon the same conditions on which loans are provided to be made by seminary trustees appointed by boards doing county business.]

SEC. 23. Such board of trustees in any county in this state, are hereby vested with the same powers in recovering seminary monies and effects; that are granted to trustees of seminary funds appointed by boards doing county business, and shall in all cases be amenable to the board doing county business in the proper county, for the faithful discharge of all their duties.

SEC. 24. A majority of any board of trustees, elected and qualified according to the provisions of this act, shall have full power to transact any business relating to their proper seminary.

SEC. 25. Any seminary or seminaries of learning, established in any county or counties in this state, shall remain permanent, after the taking effect of this act, and it shall be the duty of the qualified voters in any such county or counties, on the day of the next general election, and triennially thereafter, to elect trustees of such seminary or seminaries, as provided in the eleventh section of this act; which trustees, after being duly qualified according to the provisions of this act, shall be vested with all the powers and rights delegated to other trustees, by this act. And all acts heretofore done under and pursuant to any other act or acts, by the present managers of any such seminary, are hereby declared legal and valid to all intents and purposes.

SEC. 26. A majority of the board of trustees of any esminary, now or hereafter established, shall have full power, from time to time, to make such by-laws and regulations in

writing, not inconsistent with the constitutions and laws of this state and the United States, as to them shall appear necessary for the good government of such seminary.

SEC. 27. It is hereby made the duty of the prosecuting attorneys of the several judicial circuits in this state, to attend to all suits and prosecutions instituted by or against any trustee or board of trustees, in their official or corporate characters, in their several circuits; for which they shall be paid the sum of five dollars, to be taxed with the other costs in the suit, provided the judgment or decree is in favour of such trustee or trustees.

Prosecuting attorney shall conduct all suits involving seminary rights.

SEC. 28. Any vacancy that may occur in any board of trustees, in any county of this state, by the death, resignation or removal from office, of any member of such board, shall be filled by appointment made by the board doing county business therein; and such person so appointed, shall be subject, before entering upon the duties of his office, to give bond in the same manner as other trustees, and shall hold his office until a successor shall be elected, at the next general election, and duly qualified.

Vacancies to be filled by county board.

SEC. 29. The trustee or trustees of any county seminary in this state, are authorized to draw on the state treasury, for their several proportions of the monies arising from fines collected from persons conscientiously scrupulous of bearing arms; and the treasurer of state is hereby directed to pay the same.

Trustees may draw for conscientious fines.

SEC. 30. The circuit courts of the several counties in this state, shall have jurisdiction in all matters relating to the seminaries thereof, and upon the relation of the board doing county business in any county, shall take cognizance of, and inquire into the management of the seminary affairs, by any board of trustees, and pass such orders and decrees for the preservation and correct disposition of all funds and effects of such seminary, as their discretion shall direct; and should any member or members of any board of trustees incorporated by this act, be guilty of any wilful and corrupt official misconduct, said court may remove such member or members from office: *Provided*, That the provisions of this act shall not affect any special acts, relative to county seminaries, now in force.

Circuit court shall adjudge in regard to seminary matters, &c.

Penalty vs. trustee for violation of duty.

Proviso as to special acts, in force.

CHAPTER XCI.

An Act to authorize the Loaning of the Seminary Funds.

[APPROVED, JANUARY 24, 1828.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That a loan office shall be, and the same is hereby

Loan office established under the control of the treasurer.

Treasurer's oath & bond.

Funds.

Treasurer's powers as superintendent to lend the funds upon mortgage.

Title of mortgage premises, how investigated.

Treasurer may appoint commissioners to value real estate offered in mortgage.

established, for the state of Indiana, in the town of Indianapolis, to be connected with, and kept at the office of the state treasurer, and to be under the superintendence of the state treasurer for the time being.

SEC. 2. The treasurer before entering upon the duties by this act enjoined, shall be duly sworn, by some authorized person, faithfully to discharge his duty, as herein required; and moreover give bond with approved securities, in the penal sum of twenty thousand dollars, payable to the state of Indiana, for the use of the Indiana college, and to be approved of by the governor, and conditioned for the faithful discharge of the duties of his office as superintendent aforesaid, which bond shall be filed in the office of the auditor of public accounts, and shall from its date be a lien on the lands and tenements of the obligors.

SEC. 3. That the funds for the loan office hereby established, shall consist of the principal of all monies, the proceeds of the sales of the seminary lands in Gibson and Monroe counties, which now are, or shall hereafter, agreeably to the laws of this state, be paid into the state treasury; together with all grants, gifts and donations made in money, and which by the donor may be directed to be funded in said loan office, for the use of the college aforesaid.

SEC. 4. The treasurer of state as superintendent of the loan office aforesaid, shall have power, for and on behalf of this state, and it is hereby made his duty, from time to time, to make loans of any, or all the monies in said office, to citizens of Indiana, on a pledge of real estate, to be secured by mortgage as hereinafter prescribed.

SEC. 5. The treasurer aforesaid shall duly inform himself of the value of all real estate, and shall be judge of the validity of the title thereof, which may be offered as security for monies on loan; and in order to secure the said treasurer the more effectually from imposition, it is hereby made the duty of all persons, applying to him for monies on a loan, to produce to said treasurer for his inspection, a clear and valid title in fee simple, to the property proposed to be mortgaged at said loan office.

SEC. 6. The treasurer shall have power, whenever he may deem it necessary, to appoint commissioners in any county of this state, to value and appraise any lands which may be offered in mortgage at the said loan office, and every valuation of land in any county as herein provided, shall be signed and certified, by at least three of said commissioners: *Provided always*, That said treasurer shall have power to fill all vacancies, or to remove any such commissioners at pleasure.

SEC. 7. The commissioners appointed in any county as aforesaid, after being duly sworn, faithfully to discharge

their duty as herein required, shall on application of the owner of any land or freehold estate in their proper county, proceed to examine and appraise said property, and after such examination and appraisal had, to give the owner thereof a certificate, under their hands and seals, setting forth the valuation thereof in specie, at the common selling rate, at the time being, in their said county, and moreover specify in said certificate, the amount of land in acres, the quarter or half quarter section, the number of the section, township and range, in which said land lies; or where any land is valued as aforesaid, have not been surveyed by authority of the United States, then it shall be the duty of said commissioners, otherwise to designate and specify the land in the best manner possible.

Duty of such commissioners as to valuation.

SEC. 8. That the commissioners appointed by the treasurer as aforesaid, to value lands to be mortgaged to said loan office, shall be entitled to receive one dollar per day, to be paid by the borrower.

Commissioner's compensation.

SEC. 9. All monies shall be loaned out of the loan office aforesaid, at an interest of six per centum per annum, which shall be always paid in advance, nor shall any person receive money on loan to a greater amount than one half the real unincumbered value of the lands mortgaged therefor at the loan office; nor shall any one person borrow money out of said loan office, to a greater amount than five hundred dollars.

Rate of interest.

SEC. 10. That the mortgage to be taken in security at the loan office, may be taken in the following form in substance, to wit: I, A. B. do assign over and transfer to ——— superintendent of the loan office of Indiana, and his successor in office, for the use of the Indiana college, (here describe the land particularly,) which land I declare to be in mortgage for the payment of ——— dollars, with six per cent. per annum from the ——— day of ———, and I do agree that the same may be exposed to sale, if not paid at maturity, for the principal and interest at the time when the same shall become due and payable, together with five per centum damages thereon, and all costs, witness my hand and seal, this ——— day of ——— 18—. Which mortgage shall be accompanied with a note or bond for the sum so borrowed, and shall be valid to all intents and purposes.

Form of mortgage.

SEC. 11. That all mortgages taken for loans of money under this act, shall be considered as being of record from the date thereof, and shall have priority of any mortgages or conveyances of the same property not previously recorded in the county where the land lies; and the person applying for a loan of money, shall produce a certificate from the recorder and clerk, of the county where the land lies, to the superintendent of the loan office, that there is

Clerk shall certify to no incumbrance.

and applicant shall also make oath.

Mortgage to be recorded.

Monies to be loaned for five years.

Mode of enforcing payment.

Treasurer to report to the general assembly, the names of borrowers, and amount borrowed.

Treasurer may loan to the state.

Interest to be paid to the Indiana college.

no conveyance or incumbrance on said land, in either of their offices, and shall moreover take an oath before the superintendent aforesaid, before he shall be entitled to receive the amount allowed on the mortgage of his land, that there is no incumbrance or better claim in law or equity, that he knows of, or believes, on the said land; and any person swearing falsely in the premises, shall be liable to all the pains and penalties provided by law for wilful and corrupt perjury: *Provided, however,* That all mortgages, taken as is herein directed, shall be recorded within thirty days after the execution thereof, in the county where the land so mortgaged lies.

SEC. 12. That no money shall be loaned at said loan office for a longer term than five years, the interest of which shall be paid annually in advance; and in all cases where the interest or amount loaned shall be in arrear or due, the superintendent aforesaid shall be, and he is hereby authorized and required, to advertise the mortgaged property, sixty days in one or more of the newspapers printed in this state, and make sale of so much of the mortgaged premises to the highest bidder, for cash, as will pay the amount due, together with the damages and costs of advertising and selling the same; and the said superintendent is hereby fully empowered to make conveyances for the same to the purchaser or purchasers thereof, or if he should deem it proper, to buy the same in for the benefit of the Indiana college aforesaid: *Provided,* That where the premises sell for a greater sum than the said debt, interest, damages, and costs, the said superintendent shall pay the overplus over to the mortgager, his heirs or assigns.

SEC. 13. The superintendent aforesaid, shall keep fair and regular entries, (in a book or books to be kept for that purpose,) of his proceedings as herein required, and shall make a detailed and accurate report thereof, to both houses of the general assembly of this state, on the first week of each session annually, setting forth the names of the persons borrowing money, the amount so borrowed, and the manner in which the same is secured; and moreover shall submit to the legislature, or a committee thereof, when required, all books, documents and papers whatever, in relation to or concerning the loan office aforesaid.

SEC. 14. That no provision of this act shall be so construed, as to prevent the superintendent of the said loan office, from loaning any money in said office to the state of Indiana, upon the faith and credit of the state.

SEC. 15. That it shall be the duty of the superintendent aforesaid, at all times, to pay over to the order of the board of trustees of the Indiana college, duly signed by the president, and countersigned by the secretary thereof, any in-

terest of monies accruing from the loans herein contemplated, and to charge the same against the said Indiana college.

SEC. 16. The loan office aforesaid shall go into full operation on or before the first Monday of April next, at which time this act shall take effect and be in force, and the public printer of this state is hereby required to publish this act in the Indianapolis Gazette, for four weeks before the date aforesaid.

SEC. 17. The treasurer of state, for his services required as superintendent of the loan office aforesaid, shall receive each year seventy-five dollars, in addition to his salary now allowed by law, to be paid out of the interest accruing from the fund aforesaid.

Compensation to treasurer.

CHAPTER XCII.

An Act supplemental to an act, entitled "An Act to authorize the Loaning of the Seminary Funds," approved January 24, 1828.

[APPROVED, JANUARY 23, 1829.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall be, and is hereby made the duty of the treasurer of state, to make out and transmit to the several clerks of the circuit courts within this state, on or before the first day of April annually, a certified list of all lands in their respective counties, on which he may hold a mortgage, as security for the payment of any money for the use of the Indiana college; which list shall particularly designate the tract or tracts, whether half quarter, quarter, half section, section or fraction, with the township and range, in which such land lies, and the number of acres in each.

List of seminary lands, mortgaged to be sent to the different city clerks.

SEC. 2. Where any tract of land so mortgaged, shall not have been surveyed by authority of the United States, then it shall be the duty of the treasurer of state, to designate the tract or tracts, in the best manner possible, a copy of which several lists, the clerks aforesaid are hereby required to deliver to the collectors of the state and county revenue, in their respective counties, on or before the first day of July annually.

Lists to be given to collectors.

SEC. 3. *Be it further enacted*, That when any collector, in pursuance of the revenue laws of this state, shall offer for sale any of the lands, described in the first and second sections of this act, for the non-payment of taxes due thereon, such collector shall make known to the persons present, that the land so offered, is mortgaged to the treasurer of state.

Collector to inform purchasers.

Sale for taxes
subject to
mortgage.

for the use of the Indiana college, and shall sell the same, or so much thereof as will pay the taxes due thereon, subject to such mortgage; but shall make no deed to the purchaser, until he shall produce the certificate of the treasurer of state, that the sum for which such land was mortgaged, had been fully paid.

May be re-
deemed by su-
perintendent.

SEC. 4. *Be it further enacted*, That if any of the lands aforesaid should become forfeited to the state, or be sold to satisfy such mortgage, then it shall and may be lawful, for the treasurer of state, as superintendent of the Indiana loan office, to pay such person or persons, as may have purchased such mortgaged premises, for taxes due thereon, the amount of money so paid by such purchaser, together with fifty per cent. per annum thereon, out of the interest of the seminary funds in his hands: *Provided*, That nothing in this act shall be so construed, as to prevent the original owner of any land so sold, from redeeming the same, agreeably to the provisions of the existing laws of this state.

Owner may
redeem.

Loans not to
be on im-
provements,
tax titles, &c.

SEC. 5. *Be it further enacted*, That the superintendent of the loan office, in securing the loans of the college fund, shall not take into consideration the value of the perishable improvements on the lands proposed to be mortgaged to said superintendent; nor shall he receive any title as valid, which is derived by deed from any sheriff, collector, executor, administrator or guardian.

Superintend-
ent's further
duty.

SEC. 6. *Be it further enacted*, That it shall be the duty of the superintendent, to reduce the amount authorized to be loaned, on any valuation, when from the face of the valuation, or from information received, he shall have reason to believe, such valuation was not in proportion to the prices of similar property selling in its vicinity.

Mortgages
how foreclos-
ed.

SEC. 7. When any interest or principal of the college fund, loaned out under the provisions of the act to which this is supplemental, shall not be paid, as the same was agreed to be done in the mortgage and note given for the loan of said money, the superintendent of the loan office is hereby required to advertise the mortgaged premises, sixty days in one or more of the newspapers of this state, and make sale of so much of the same, as will pay the principal and interest secured by said mortgage, with five per centum damages thereon, and the costs of advertising the same; and if said land will not sell for so much ready money as will pay the principal, interest, damages and cost as aforesaid, it shall be the duty of the superintendent, to buy the same for the benefit of the Indiana college; and immediately, if possible, or at any time thereafter, may proceed to sell said land to the highest bidder, (the bid being equal to the amount chargeable on said land) on a credit of five years, the purchaser to pay the interest annually in advance, and the land

When bought
& how re-sold

to forfeit immediately for the benefit of said college, if said principal or interest, or either of them, shall not be punctually paid, according to the terms of such sale.

Sec. 8. When any land shall be sold as aforesaid, and full payment be made therefor, the superintendent shall make a deed for the same, to the purchaser thereof; and the superintendent, for his services in attending said sale and making said deed, shall receive five per centum of the amount of the sale, payable out of said damages; and when said land shall be sold on a credit, as herein before directed, the superintendent shall give the purchaser a certificate of such sale, and the terms on which it is made, for which he shall have the same allowance.

Seminary
lands, how
sold and con-
veyed.

Sec. 9. All sales of land made under the provisions of this act, or of the act to which this is supplemental, shall be held at the court house door in the town of Indianapolis, in pursuance of the notice given as aforesaid.

Sales where
made.

Sec. 10. The superintendent of the loan office, shall record all deeds and certificates, made as aforesaid; and his said deeds, sealed with his private seal, shall be taken and deemed as full evidence of the transaction therein specified.

Deed &c.
where record-
ed.

Sec. 11. It shall be lawful for the said superintendent, to loan any interest of the college fund in his hands, in the same manner as other funds: *Provided*, said interest shall not be wanted for the use of the Indiana college.

Interest may
be loaned.

Sec. 12. The superintendent aforesaid, is hereby empowered and authorized, to administer all oaths required by this act, or the act to which this is supplemental.

Superintend-
ent may ad-
minister oaths

This act to take effect and be in force from and after its publication.

CHAPTER XCIII.

A joint resolution of the General Assembly, authorizing the treasurer of state to purchase a book, and make certain records therein.

[APPROVED, JANUARY 24, 1828.]

Resolved by the General Assembly of the state of Indiana, That the treasurer of state be required to purchase a suitable book, to record all the returns of the commissioners of the seminary townships, to his office; and also to record the patents that may be issued for any of the lands sold in said townships; and said treasurer is hereby authorized to draw upon the interest of the seminary fund in the state treasury, for the amount necessary to purchase said book.

This resolution to be in force from and after its passage.

CHAPTER XCIV.

An Act making provision for Compensation to the Recorders of Gibson and Monroe Counties.

[APPROVED, JANUARY 19, 1829.]

Fees to recorders for recording seminary titles, &c.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the recorders of the counties of Gibson and Monroe, be entitled to receive the following fees, for the services hereinafter enumerated, in relation to the seminary lands in said counties: twelve and one half cents for every hundred words, for recording the original certificates, the receipts and for executing and recording the final certificate; and that said recorders be allowed the sum of one dollar for each quarterly report made by the said recorders, as required by law; which the auditor of public accounts is hereby authorized to audit, and the treasurer of state to pay, out of the interest of any monies in the treasury, belonging to the seminary fund, not otherwise appropriated.

Out of the seminary funds.

SEC. 2. The auditor of public accounts, is hereby required to audit, and the treasurer of state to pay, out of the interest of any monies in the treasury, belonging to the seminary fund, not otherwise appropriated, to the recorders of said counties of Gibson and Monroe, their proper claims for all services by them rendered, in relation to the seminary lands, at the rate above fixed; and also the amount by them expended, for the purchase of record books as required by law, which claims and expenditures shall be attested to by said recorders.

Certificate how assigned.

SEC. 3. *And be it further enacted,* That any person selling his certificate, and wishing to transfer the same, shall be permitted so to do, on the parties appearing before the said recorder, in the county where the land lies, and acknowledging their consent to the same; which acknowledgment the recorder is hereby authorized to take, and shall enter the same of record in his record book; which acknowledgment, when so taken and recorded, shall transfer all the right, title and interest, of, in, and unto the said certificate, to the person to whom the acknowledgment and transfer is made. The person acknowledging and transferring the same, shall pay to the recorder, before whom the same is taken, the sum of twenty-five cents, in full for his fee herein.

Recorder's fee

This act shall take effect, and be in force from and after its passage.

CHAPTER XCV.

An Act for the encouragement of Religion and Learning.

[APPROVED, DECEMBER 31, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the board of county commissioners for the county of Gibson, at their spring session, annually and every year, shall appoint three fit persons of said county, as trustees, who, when appointed, shall be called and styled, *The Board of Trustees of the Princeton Academy.* Board of trustees of the Princeton academy to be appointed.

SEC. 2. That it shall be lawful for the agent of Gibson county, so soon as the appointment of the trustees hereby provided for shall have been made, to convey to said trustees and their successors, lot number one, in range one in the second survey of lots in the town of Princeton, in the said county of Gibson. That the lot of ground hereby mentioned and directed to be conveyed, shall forever remain and be for the purposes, hereinafter mentioned, and for none other, to wit: the building houses of religious worship and seminaries of learning, which houses of worship shall be for the use of all preachers regularly ordained, and in good standing in their respective societies, according to their order. That no society, or other person, with the consent of the trustees or otherwise, shall be permitted to bury their dead upon said lot hereby directed to be conveyed, upon pain of forfeiture of the same to the said county of Gibson. Lot No. 1, to be conveyed.
And for what purposes.

CHAPTER XCVI.

An Act for the Apportionment of Senators and Representatives in the General Assembly of this State.

[APPROVED, JANUARY 30, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That for the purpose of electing senators to the general assembly of this state, for the ensuing five years, the state shall be and is hereby divided into the following districts, each of which shall be entitled to one senator, viz: Senatorial districts.

Posey, Vanderburgh and Warrick, one; Gibson, Pike and Dubois, one; Spencer, Perry and Crawford, one; Knox, Daviess and Martin, one; Harrison, one; Washington, one; Monroe, Green and Owen, one; Morgan, Hendricks and Boone, one; Tippecanoe, Carroll and Cass, one; Montgomery and Clinton, one; Orange and Lawrence.

one; Vermillion and Warren, one; Randolph, Delaware, Allen, Elkhart and St. Joseph, one; Henry, Madison and Hancock, one; Marion, Hamilton, and all the country north of Hamilton, to the great Miami reservation, one; Fountain, one; Johnson and Bartholomew, one; Jennings, Jackson and Scott, one; Clark and Floyd, one; Jefferson, one; Switzerland and Ripley, one; Shelby and Decatur, one; Dearborn, one; Franklin, one; Fayette and Union, one; Wayne, one; Rush, one; Putnam, one; Sullivan, Vigo and Clay, one; Parke, one.

Representative districts.

SEC. 2. That in electing representatives to the general assembly of this state, for the ensuing five years, the several counties shall be entitled to elect as follows, viz:

The county of Wayne, four representatives; Dearborn, three; Washington, Orange, Lawrence, Jefferson, Rush, Harrison, Putnam, Fountain, Tippecanoe, Franklin, Fayette, Union and Clark, two respectively; Posey, Gibson, Crawford, Green, Owen, Monroe, Sullivan, Warren, Switzerland, Ripley, Jennings, Scott, Floyd, Clay, Johnson, Morgan, Hendricks, Shelby, Decatur, Henry, Marion, Randolph, Bartholomew, Vigo and Jackson, one respectively; Vanderburgh and Warrick, one; Perry and Spencer, one; Pike and Dubois, one; Knox, one; Daviess and Martin, one, and one additional representative to be elected alternately by said districts, commencing with the county of Knox; Montgomery and Clinton, two; Carroll and Cass, one; Hamilton and Boon, and all the country north to the great Miami reservation, one; Madison and Hancock, one; Allen, Elkhart and St. Joseph, one; Vermillion, one; Parke, one, with one additional representative for the said two counties, to be elected each year alternately, commencing with the county of Vermillion; Delaware and all the territory attached thereto, one. The counties of Clark and Floyd shall be entitled to one additional representative, to be elected each year alternately, commencing with the county of Floyd.

CHAPTER XCVII.

An Act to provide for the commissioning of Sheriffs and Coroners, and to regulate their duties.

[APPROVED, JANUARY 7, 1824.]

Commissions to be forwarded to the clerks

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be the duty of the governor, as soon as the nature of the case will admit, to commission the se-

veral persons returned as elected for sheriffs or coroners in the several counties in this state; which commissions he shall cause to be forwarded to the clerks of the circuit courts in the several counties, where such sheriffs or coroners shall respectively reside.

SEC. 2. It shall be the duty of the clerk of the circuit court in each county, on the receipt of a commission for sheriff or coroner, to give notice thereof to such person so commissioned, to come forward and give bond and security for the faithful discharge of the duties of his office. Clerk to notify, &c.

SEC. 3. It shall be the duty of the clerk of the circuit court, to take of the sheriff elect, a bond with two or more securities, to be approved by the two associate judges, in the sum of five thousand dollars, payable to the state of Indiana, conditioned for the faithful discharge of his duty, and for the safe keeping and delivering over according to law, to the proper persons, all sums of money that may come into his hands by virtue of his office; and of the coroner elect, in the sum of two thousand dollars, payable as aforesaid, for the faithful discharge of his duty, and for the safe keeping and delivering according to law, to the proper persons, all sums of money that may come into his hands by virtue of his office; which bonds shall be forthwith recorded in the recorder's office, and filed in the clerk's office of the county in which they are taken; and it shall be the duty of each of the clerks of the circuit courts, on the same being filed in his office, to transmit a certified copy thereof, to the office of the secretary of state, to be by him preserved. Sheriff's bond
And in all motions or suits to be made or brought upon such bond, against any sheriff or coroner, in the name, or for the use and benefit of the state, or any individual thereof, such copy filed as aforesaid, shall be sufficient evidence of the existence of such bond, and the same proceeding may be had thereon, as on the original bond. Bonds recorded and filed.
Clerk to transmit a certified copy of bond, to the office of secretary of state.

SEC. 4. The clerk of the circuit court, is hereby authorized to administer to every person, who is commissioned sheriff or coroner, after such person has given bond and security as required by this act, the several oaths or affirmations required by the constitution and laws of this state, which he shall certify on the back of such commission, and file a copy of such certificate in his office, which commission so certified, shall be sufficient authority for the person thus qualified, to perform all the duties that belong to his office. Oath.

SEC. 5. Sheriffs and coroners shall be commissioned to serve two years from and after the time of their election, and until their successors are chosen and qualified. Term, 2 years.

SEC. 6. Whenever the general assembly shall lay off a new county, the governor shall appoint and commission a Governor appoint a sheriff

and coroner in new counties. sheriff and coroner to act as such, until the next general election, and until successors are chosen and qualified.

Vacancies, how filled. SEC. 7. Hereafter when the office of sheriff or coroner of any county, shall become vacant, by death, resignation, removal from office, neglect or refusal to give bond and security as required by this act, or refusal to qualify, it shall be the duty of the governor, to appoint and commission some suitable person, resident of the county, to fill such vacancy, until the next general election, and until a successor be duly elected and qualified into office.

Persons appointed in new counties, and to fill vacancies, give bond, &c. SEC. 8. When appointments shall be made of sheriffs and coroners in any new county, the person so appointed shall give bond and security, in the sum and manner pointed out by the governor; all persons appointed to fill vacancies in said offices, shall give bond and security, and take the same oath, as in other cases of sheriffs or coroners: and it shall be the duty of the governor, at the time he shall make any appointment as aforesaid, to issue a writ of election, directed to the sheriff of the proper county, requiring him to give ten days notice of the election of such officer at the next general election: *Provided*, where any vacancy as aforesaid shall take place in any county, immediately preceding a general election, and when no special appointment shall have been made, it shall be the duty of the sheriff or coroner, as the case may be, to give notice of the same, and to cause a poll to be opened for the filling of such vacancy.

Coroner in certain cases shall perform the duties of sheriff. SEC. 9. The coroner shall perform the duties of sheriff in all cases, where the sheriff is interested or prejudiced; and also in case of vacancy by death, resignation or otherwise in the office of sheriff, the coroner shall perform the duties of such office, until a sheriff is appointed or elected, and qualified according to the provisions of this act.

Sheriffs and coroners, their duties. SEC. 10. That it shall be the duty of each and every sheriff and coroner, to keep the peace, by causing all offenders against law in their view, to enter into recognizance with securities, to appear at the next circuit court in the county, on the first day of the term thereof, and in case of refusal, to commit to the common prison; which recognizance shall be certified and returned by the sheriff or coroner, on or before the first day of the next term. It shall also be their duty to quell and suppress affrays, riots and insurrections, for which end they shall and are hereby authorized and empowered, to call to their aid the power of the county. They shall pursue and commit to jail, all felons and traitors; they shall execute all warrants, writs and process, which by law shall appertain to the duties of their office, and which shall be directed to them by legal authority. The sheriff shall duly attend to all courts of record, at their respective terms or sessions in his county, shall have the custody of the jail

thereof, and shall also do and perform all other duties that are or shall be enjoined on him by law; and sheriffs may transact any part of their official duties by deputy, being Deputy. accountable for the acts of such deputy.

SEC. 11. That the sheriffs, who may have resigned, or whose term of service may have expired, shall be and they are hereby authorized to proceed in the collection of taxes, fee-bills, fines and executions which were due them at the time their said offices were vacated, under the same rules and regulations by which they were authorized by virtue of their respective commissions; provided such authority shall not extend to a longer term than two years. Sheriffs out of office may collect taxes, &c.

SEC. 12. That all acts of sheriffs whose term of service has expired, by resignation or otherwise, in collecting taxes, advertising real estate for sale for taxes, sale thereof, making deeds or giving certificates of real estate, to the purchasers thereof, on sale for the non-payment of taxes, shall be legal, and are hereby legalized in all respects, as though Their acts legal. the same had been done by their successors in office: *Provided*, such collection and sale shall have been conducted in all other respects, agreeably to the laws of this state.

SEC. 13. It shall be the duty of the sheriffs in their respective counties, to serve, execute and return all process to them directed by the supreme court, in the same manner, as process issued by the circuit courts, for which they shall be entitled to similar fees. Sheriffs shall serve and return process of supreme court

SEC. 14. Any person or persons called upon by any sheriff or other officer, to assist in the execution of his office, and failing to obey when so called, shall, unless he shews sufficient cause for not obeying, be fined, by any court having competent jurisdiction, on indictment, and being found guilty by a jury, in any sum not exceeding fifteen dollars. May call persons to his assistance.

SEC. 15. Every coroner, as soon as he shall be notified of the dead body of any person supposed to have come to his or her death by violence or casualty, found or lying within his county, shall make out his warrant directed to the constable of the township, where the dead body is found or lying, requiring him forthwith to summon a jury of good and lawful men of the said township, not less than fifteen in all, Coroner notified of dead body, how to proceed.

so that twelve may be present, to appear before such coroner, at the time and place expressed in his warrant, and to inquire upon a view of the body, (*name here the person deceased, if known*) there lying dead, how and in what manner, and by whom, he or she came to his or her death; and every constable, to whom such warrant shall be delivered or directed, shall forthwith execute the same, and shall repair to the place, where the dead body is at the time mentioned, and make return of the warrant, with the proceedings thereon, unto the coroner who granted the same; and every con- Jury.

stable failing to execute such warrant, or to return the same as aforesaid, shall forfeit and pay the sum of three dollars; and every person summoned as a juror aforesaid, that shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding three dollars; which fine shall be recovered by action of debt, before any justice of the peace in the proper township, and be applied to the use of the county seminary.

Oath of Jury. SEC. 16. The coroner shall administer an oath or affirmation to twelve of the jurors that shall appear, to the foreman first, in the following manner: "You do solemnly swear, or affirm, (as the case may be,) that you will diligently inquire and true presentment make, how and in what manner, and by whom A. B. who here lies dead, came to his death, and that you will deliver to me, the coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to the best of your knowledge: *So help you God.*"

SEC. 17. The other jurors shall swear or affirm (as the case may be) in the following form: "Such oath or affirmation as your foreman hath now taken before you on his part, you and each of you will keep and observe on your respective parts: *So help you God.*"

Charge. SEC. 18. The jurors being sworn, the coroner shall give them a charge upon their oaths to declare of the death of the person, whether he or she died of felony or mischance, or accident, and if of felony, who were the principals, and who were accessaries, with what instrument he or she was struck or wounded, and so of all prevailing circumstances, which may come by presumption; and if by mischance or accident, whether by the act of man, or whether by hurt, fall, stroke, drowning or otherwise; also, to inquire of the persons, who, if any were present, of the friends of the body, his or her relatives and neighbours, whether he or she was killed in the same place, where the body was found; and if elsewhere, by whom and how the body was brought thence, and of all other circumstances relating to said death; and if he or she died of his or her own felony, then to inquire of the manner, means or instrument, and of all other circumstances concerning it.

Proclamation SEC. 19. The jury being charged, shall stand together, and proclamation shall be made for any persons, who can give evidence, to draw near, and they shall be heard.

Witnesses. SEC. 20. Every coroner is further empowered to send his warrant for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question; he shall administer an oath or affirmation to them in the following form: "You do solemnly swear or affirm, that the evidence you shall give to

the inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth, and nothing but the truth: *So help you God.*"

SEC. 21. The evidence of such witness shall be in writing, subscribed by him, and if it relates to the trial of any person concerned in the death, then shall the coroner bind such witness or witnesses by recognizance, in a reasonable sum, for their personal appearance at the next circuit court, to be holden within the same county, there to give evidence accordingly; and commit to the common jail of said county, any witness or witnesses refusing to enter into such recognizance; and shall return to the same court, such inquisition, written evidence and recognizance by him taken; and the jury having viewed the body, heard the evidence, and made all the inquiry within their power, shall draw up and deliver to the coroner, their verdict upon the death under consideration, in writing under their hands and seals.

Witnesses
may be recog-
nized.

Verdict.

SEC. 22. Upon an inquisition found before any coroner, of the death of any person, by the felony or misfortune of another, he shall speedily inform one or more of the justices of the same county thereof, to the intent, that the person killing or being in any way instrumental in the death, may be apprehended, examined and secured in order for trial.

In case of felonious homicide, coroner shall inform a justice.

SEC. 23. In every case where the coroner shall be absent from the county, or unable to attend, it shall be lawful for any justice of the peace of the proper township, to hold an inquest over any dead body; which justice shall proceed in all respects, as coroners are directed to do by the foregoing provisions.

Coroner unable to attend, justice may hold inquest.

CHAPTER XCVIII.

An Act providing for running and marking the Line dividing the States of Indiana and Illinois.

[APPROVED, JANUARY 8, 1821.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the governor be, and he is hereby authorized and required, to appoint a commissioner on the part of this state, to act in conjunction with a similar commissioner that may be appointed on the part of the state of Illinois, to adjust, run and mark the line between the aforesaid states, from where a north line from Vincennes, last leaves the north-west bank of the Wabash river, to the north-west corner of the state of Indiana, or to where said north line intersects the south end of lake Michigan.

A commissioner to be appointed on the part of this state, to act with a similar commissioner on the part of Illinois, to adjust, run and mark the line between said states.

SEC. 2. The commissioners appointed pursuant to the

When and where said commissioners shall meet. To be sworn. Their duties defined.

provisions of this act, shall meet at the court house in the town of Vincennes, on such day as shall be designated by the executive authority of their respective states, and after being duly sworn, well and truly to perform the duties imposed by the provisions of this act, shall proceed to adjust, run and mark said state line, agreeably to the boundaries designated by the act of congress, approved, April 19th, 1816, to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states.

Powers & duties of such commissioners.

SEC. 3. The commissioners appointed in pursuance of the provisions of this act, shall have power and are hereby authorized to employ a skilful surveyor, and such chainmen and other persons as shall be necessary to run and mark said state line, agreeably to the provisions of this act, who shall severally take an oath or affirmation, well and truly to perform their several duties.

Further powers and duties.

SEC. 4. The commissioners shall cause the line to be sufficiently marked in the following manner: Where the same runs through timbered land, each sight tree to be marked with three notches on each side, and the trees at a convenient distance on each side, to be blazed in such manner, as will shew on which side the true line runs; and at the end of each and every mile, to set a post at least of six inches diameter of durable timber, to be set at least fifteen inches deep, and mark two or more bearing trees, as nearly as may be in opposite directions, with a blaze and notch across the same, and note the kind of timber, estimated diameter, and course, and distance they are from said post, and to mark on one of said bearing trees, or some other convenient tree, with a marking iron, the words, STATE LINE, at full length; and where said line runs through a prairie, to raise a mound at least four feet high and four feet of a base, at the end of each mile; and to note in the field book, the crossing of each stream or water course, the width thereof, the course the same runs, and whether navigable or otherwise, and make such other marks as they may deem necessary, in order to perpetuate said state line.

The duties required of the surveyor.

SEC. 5. It shall be the duty of said surveyor, to make out two fair and complete maps of the state line thus run and marked, on good and durable paper, by a scale of ten miles to an inch, with two fair copies of his field book, with explanatory notes and references, annexed to each map, under his hand and seal, which maps shall be approved of by said commissioners, and after jointly signing the same, to transmit one of said maps and field books, to the secretary of state's office in their respective states, there to be deposited, who shall lay the same before the subsequent general assembly

of their respective states for their approval, and when approved by the proper authority of each state, the line so run and marked, shall be and remain the permanent boundary line between the states of Indiana and Illinois.

SEC. 6. The governor of this state is hereby authorized and required, to transmit a copy of this act to the executive authority of the state of Illinois, with a request that the same may be laid before the general assembly of said state, with a request that they will pass a similar law.

The governor of this state to transmit a copy of this act, &c.

SEC. 7. When the governor of this state shall be informed by the proper authority of the state of Illinois, that a similar law has passed, and they are ready on their part to carry the same into effect, he shall proceed to appoint a commissioner on the part of this state, agreeably to the provisions of this act.

When the commissioner for this state shall be appointed.

SEC. 8. The commissioner on the part of this state, shall receive as compensation for his services, the sum of three dollars per day, for each day he may be necessarily employed in the duties of his office, to be paid out of the treasury of this state, and the surveyor, chainmen and other persons employed, shall receive such compensation as the commissioners shall deem reasonable: *Provided*, the whole expenses thereof, shall not exceed five dollars per mile, to be paid jointly by each state.

Allowance made to the commissioner, surveyor, chainmen, &c. on the part of this state.

CHAPTER XCIX.

A Joint Resolution confirming the Line between the States of Indiana and Illinois.

[APPROVED, DECEMBER 11, 1821.]

Resolved by the General Assembly of the state of Indiana, That the plat and field notes of the line dividing the states of Indiana and Illinois, made by John McDonald, surveyor, and approved the twenty-sixth day of July, eighteen hundred and twenty-one, by John Tipton and Samuel McClintock, commissioners on the part of said states respectively, be deposited in the office of the secretary of state, for safe keeping.

Resolved also, That the said line, commencing on the north or north-west bank of the Wabash river, forty-six miles from Vincennes, and terminating in Lake Michigan, be, and the same is hereby approved, ratified and confirmed on the part of this state; and that so soon as said line shall be ratified on the part of Illinois, the same shall be and remain the permanent boundary line between the states of Indiana and Illinois.

CHAPTER C.

A Joint Resolution relative to the northern boundary of the State of Indiana.

[APPROVED, JANUARY 17, 1838.]

Resolved by the General Assembly of the state of Indiana, That the northern boundary of the said state of Indiana, as made and reported to the governor thereof, under the direction of the surveyor general, in obedience to an act of the congress of the United States, entitled "an act to authorize the president of the United States, to ascertain and designate the northern boundary of the state of Indiana," approved, March second, one thousand eight hundred and twenty-seven, be, and the same is hereby approved by the authorities of the state aforesaid; and the secretary of state is hereby directed, to record the plat of said survey amongst the records of his office, and to file the same as reported as aforesaid, amongst the public documents of the country.

CHAPTER CI.

An Act for the regulation of the State Prison.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the lot of ground, together with all the buildings and improvements thereon, and the appurtenances thereunto belonging, situate in the town of Jeffersonville, in the county of Clark, heretofore established and used as a state prison, shall be, and the same is hereby continued as such, in which all convicts sentenced, under the penal laws of this state to hard labour, shall be confined and kept; and shall be henceforth managed and conducted, under the directions and regulations hereinafter prescribed.

SEC. 2. It shall be the duty of the governor, to farm out the said prison, together with all the stock, tools, materials, prisoners and every thing belonging to, or in any way connected therewith, to some responsible person, by contract, in the manner hereinafter mentioned, for such period, not exceeding five years, as to him may be deemed most conducive to the benefit of said institution and the interest of the state; and if possible on such terms, as will prevent the same from becoming chargeable to the state; and the person to whom the same may be so let, shall be styled "The superintendent of the state prison of Indiana," who shall receive

Prison established at Jeffersonville.

Governor shall farm out the prison for 5 years.

Superintendent & his powers and duties.

the charge of the same, and be invested with the sole and entire management and control thereof, and all its concerns, during the term he may farm the same, subject to such regulations and restrictions, as may from time to time be established by law; and shall at his own expense, furnish the same with all the stock and materials necessary for carrying on the business thereof, clothe, feed and lodge the convicts, appoint his own guards and keepers, and the same dismiss at pleasure; and in short, shall be bound for the entire charge of keeping up said institution, so as to keep the state wholly indemnified and not liable to any expense for the same, except for such repairs as may become necessary to be made to the same, and all the proceeds thereof shall take to his own use; but as a consideration for the use and benefit of said institution, shall pay into the state treasury, for the use of the state of Indiana, such sum of money and on such conditions, as may be agreed on between him and the governor, for that purpose.

Bonus to the state.

SEC. 3. Previous to farming out said prison, the governor shall give six weeks public notice by advertisement, to be published in the newspapers printed at Indianapolis, that he will on a day certain, to be named in such notice, receive sealed proposals, for the farming out of said prison, which sealed proposals shall be accompanied by the names of the securities who may be willing to be responsible for the faithful performance of such contemplated contract, and satisfactory vouchers of the personal character and capacity of the proposed contractor; on the reception of which, and on the day named in such published notice, the governor shall, in the presence of the secretary of state, auditor and treasurer, open such sealed proposals, and with the advice and concurrence of the said officers, or a majority of them, determine which of the said proposals, if any, it is for the interest of the state to accept; and upon such determination being had, it shall be the duty of the secretary of state, forthwith to notify the proposed contractor, of the acceptance of his proposal, and proceed to have the contract consummated in due form: *Provided*, nothing in this act shall be so construed as to affect vesting [existing] contracts in regard to the state prison.

Governor shall give notice that the prison will be let, and proposals, how made.

Proposals, how accepted.

Contractor shall be notified.

SEC. 4. The said person to whom the said prison shall be so let as aforesaid, shall by and under the name and style aforesaid, be capable both in law and equity, to sue and be sued, plead and be impleaded, in all or any of the courts [of this] state; and under such name, shall make all contracts, and carry on all his transactions relative to the management of said prison, and which shall have like validity, and be enforced in the same manner, as if made by him in his individual capacity.

Superintendent's corporate powers.

Bond of superintendent.

SEC. 5. The said superintendent, at the time of making said contract, shall enter into bond, payable to the state of Indiana, in the sum of ten thousand dollars, with six responsible freeholders as his securities, to be approved of by the governor, which bond shall be taken by the governor and attested by the secretary of state, and by the latter shall be filed in the office of the secretary of state, conditioned for the faithful performance of his duties as such superintendent, according to law, and for the fulfilment of the contract, which shall be so entered into between him and the governor, for the farming of said prison; and at the same time, it shall be the further duty of the said superintendent, to take an oath (or affirmation) faithfully to discharge his duties as aforesaid according to law, which oath or affirmation, the secretary of state is hereby authorized and required to administer, and shall be by him endorsed on the back of said superintendent's appointment, and also on the back of his official bond.

Oath of superintendent.

Superintendent shall keep account book, and report semi-annually to secretary of state.

SEC. 6. The said superintendent shall keep a journal of the transactions of said prison, and of all the accounts thereof, which he shall enter in well bound books, to be by him procured for that purpose, and shall also keep an account, shewing the situation of said prison, and report the same, to the secretary of state, on the first Mondays in July and December, of each and every year.

Superintendent shall keep descriptions of prisoners, and send semi-annual transcripts to secretary of state.

SEC. 7. Said superintendent shall keep a book of sufficient size for that purpose, well bound and good lasting materials, with a suitable index thereto, in which he shall enter the name, trade or occupation, age, size, complexion and complete description of every prisoner, the day of his entry, and when the period of his confinement will expire, the offence for which he may be confined, the county in which he was convicted, and the place of his nativity, semi-annual transcripts from which, he shall make out and transmit to the office of the secretary of state, at the same time he transmits the semi-annual returns herein before provided for.

Superseded superintendent shall deliver over books &c. to successor.

SEC. 8. It shall be the duty of every person, who may become the superintendent of said prison, as herein provided for, when his term shall expire, to deliver over to his successor, or whoever may be appointed by law to take charge of the same, all the books, papers, monies and prisoners, together with the property belonging thereto, of every description, in good order and in the same condition he shall have received the same, except the natural use and wear thereof.

Visitor shall be appointed by governor.

SEC. 9. It shall be the duty of the governor, yearly, in the month of February, to appoint some suitable person who does not reside in the town of Jeffersonville, or its vicinity, as a visitor of the state prison, who shall be paid fifty dollars per annum, out of the state treasury, for his services.

SEC. 10. It shall be the duty of such visitor, to visit the prison, at least semi-annually, examine whether there be any violation of the existing laws, at the time of such examination; for the more effectual performance of which, he shall have the right to examine into all, and particularly the concerns, books and departments of said prison, with full power to send for persons, papers and books, to swear witnesses and to take down evidence, and to examine the persons collectively or separately.

Visitor shall visit semi-annually, and his powers.

SEC. 11. Said visitor shall, once in six months at least, and as often as there is any cause of complaint, certify to the governor a minute detail of all the regimen, discipline, food, apparel, labour, punishment, care of the sick, cleanliness or otherwise, bedding, lodging, instruction, and every other thing mentioned by law, or that said visitor may deem worthy of observation appertaining to said prison or prisoners, as near as he can satisfy himself of the same, together with the sources of his information.

Visitor shall report to governor semi-annually.

SEC. 12. It shall be the duty of the superintendent, to purchase at the lowest wholesale price, from time to time, a sufficient number of the cheapest well bound bibles and testaments, to supply the prisoners that are in said prison or that may be likely to be therein, in the space of one year after such purchase, and each prisoner who is in the prison, that can read, shall be immediately presented with a bible and testament; and each prisoner that may learn to read in the prison, shall immediately thereafter be presented with a bible and testament, which books shall become the absolute property of such prisoners on their discharge from said prison.

Superintendent shall supply prisoners with bibles & testaments.

SEC. 13. On sabbath days, it shall be the duty of the superintendent, to suffer preachers of the gospel of any christian denomination, if he deem it expedient, to preach to the prisoners at such hours as not to interfere with any sabbath school regulation within said prison.

Preachers of the gospel may be admitted to preach on sabbath.

SEC. 14. Such superintendent shall suffer such religious and philanthropic persons, as may offer their services, and who he believes act from pure and disinterested motives, to come into the prison on sabbath days to teach the prisoners to read, and instruct them in a knowledge of the scriptures, and to distribute among them religious tracts, and other religious books, which tracts and books shall first be inspected by the superintendent, and be by him approved, before they shall be given to the prisoners.

Benevolent person may read to & instruct prisoners, distribute tracts, &c.

SEC. 15. It shall be the duty of the superintendent, so soon as practicable, to procure to be made a sufficient number of cells, at the expense of the state, at a reasonable price, if there should not be a sufficient number for the use of the prisoners; and each prisoner shall during each night, be kept

Cells to be prepared, prisoners kept separate during the night, conversation prohibited &c.

separate from all others, and shall not be permitted to speak to other prisoners during the night, and it shall further be an established part of the prison discipline, that all conversation between the prisoners shall be prohibited, so far as is practicable during the day, and while they are engaged at their labours or meals.

This act shall take effect and be in force, from and after the expiration of the present contract, made in May, 1828, between the governor and James Keigwin, and the said James Keigwin is hereby authorized to keep and perpetuate the said contract, until his successor appointed under the provisions of this act, shall be appointed and qualified.

CHAPTER CH.

An Act for the appointment of County Surveyors and their Deputies.

[APPROVED, FEBRUARY 4, 1831.]

- SEC. 1.** *Be it enacted by the General Assembly of the state of Indiana,* That a surveyor shall be appointed in each and every county, by the boards doing county business in their respective counties, who shall receive a certificate of his appointment, attested by the clerk of the board, whose duty it shall be to record said appointment in the record books of his county. He shall reside within the county for which he shall have been appointed, and before entering on the duties of his office, shall take an oath, faithfully to discharge the same, and give bond to the state of Indiana, with two sufficient securities to be approved of by the clerk of the circuit court of the proper county, in such sum as said clerk may direct, for the faithful execution of his office.
- SEC. 2.** The principal surveyor, shall have power to nominate and appoint a sufficient number of deputies, to perform the duties of his office, and shall be accountable for their acts.
- SEC. 3.** Whenever hereafter, any dispute may arise about the division of any lands, wherein the surveyor of the county where the lands lie, may be a party, or in any manner interested, it shall be lawful for the circuit court, on application of either party, to appoint some suitable person in said county, whose duty it shall be to proceed to divide the same, for which service the person so appointed shall be entitled to the same fees, as county surveyors are entitled to, for similar services.
- SEC. 4.** That all chain carriers, employed by county surveyors or their deputies, in the performance of any official
- Surveyors to be appointed by county board.**
- Oath & bond.**
- May appoint deputies.**
- When surveyors are interested, the court may appoint for the occasion.**
- Chain carriers to be sworn.**

duties which may be required of any such county surveyors or their deputies, shall take an oath for the faithful discharge of their respective duties as such; and such county surveyors and their deputies, are hereby authorized to administer such oath.

SEC. 5. That the surveyors of each and every county within this state, shall, when directed by the board doing county business, procure a certified copy from the register of the land office of the district in which their respective counties are situate, the field notes of the townships, ranges, sections, fractional sections and quarter sections as originally surveyed, and deposite the same in the recorder's office of the proper county, where the same shall be kept for the use and benefit of the citizens of said county, and at all times subject to their inspection.

Surveyors shall procure field notes from land offices.

Where deposited.

SEC. 6. When any person, being the owner or proprietor of any land within this state, wishes to perpetuate a corner or corners thereto, such owner or proprietor shall call upon the county surveyor of the county in which such lands are situate, who shall upon proof of notice ten days previously given, to those that may hold lands adjoining the same, provided that the person holding such lands shall be an inhabitant of such county, where the same may be situate, and if not a citizen of such county, then the person or persons wishing to perpetuate such corner or corners, shall give three week's notice in some public newspaper nearest where the lands lie, and then the said county surveyor, shall proceed to relocate such corner or corners, by depositing in the place where the original stake or corner stood, a stone or some other durable material, which if of timber shall be deposited two feet in the earth, and present one foot above the surface, having engraved on such corner stone or stake, the letters and figures answering to such corner or corners; and such surveyor shall enter in his field notes, the species of corner, with one or more living trees, (if any there are,) the kind of trees, with their diameter, with the course and distance of the said bearing trees; which shall be entered in a book to be kept by him for that purpose; for which services as aforesaid, the surveyor shall be allowed in addition to his usual fees, agreeably to the lines necessary to be surveyed to establish one or more corners, the sum of one dollar for each corner thus located, which location thus made, shall be by the said surveyor recorded in the book aforesaid.

Corners of land, how perpetuated.

Notice to non-resident owner.

Surveyor's fees.

SEC. 7. And all necessary expenses incurred in procuring and recording said field notes, shall be paid out of the county treasury of the proper county, on the order of the board doing county business. That the recorder shall on application of any person, give a certified transcript from said re-

Expenses.

Transcript of record shall be evidence.

cord of the field notes of the survey, of any section, quarter of section, or other tract of land, for which certificate the recorder shall be entitled to receive fifty cents, to be paid by the individual applying for the same; and such certificate shall be received as *prima facie* evidence, where the original would have been received.

CHAPTER CIII.

An Act concerning Tenants holding over.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That where any lands, tenements or hereditaments, are held or possessed under any landlord or landlords, by any tenant or tenants, either for a period indefinite and uncertain, or at will, paying rents, or by making valuable and lasting improvements thereon, at rent value, for such holding or possession, or from year to year, expressly or constructively, as long as the parties respectively please, such landlord or landlords, his, her or their heirs, devisees or assigns, if desirous to acquire possession of said premises, shall give notice to such tenant or tenants, his, her or their representatives, heirs, sub-lessees or assigns; to quit the possession of said premises; which notice, if such holding or possession enures as a tenancy from year to year, shall be given at least three months before the expiration of the current year, ending on the day when such holding or possession had previously commenced; and if such tenant or tenants, his, her or their representatives, heirs, sub-lessees or assigns, shall refuse to comply with such notice within three months after giving the same, such landlord or landlords, his, her or their heirs, devisees or assigns, may complain thereof before any two justices of the peace of the county where such premises are situate, who shall forthwith issue their warrant directed to the sheriff of such county, commanding him to summons, as well such tenant or tenants, his, her or their representatives, sub-lessees, heirs or assigns, (as the case may be) to appear before said justices at a certain place, within four days thereafter, to answer said complaint, as also twelve freeholders as jurors, to meet at the same time and place, for the trial of the questions arising under such complaint. And either party shall have the same privileges in challenging any of said jurors, and for the same causes, as in circuit courts; and said justices may order any defect in, or want of such panel of jurors, to be supplied from any by-standers or others, according to law.

Who may demand possession.

Three months notice to tenant.

Complaint to two justices where tenant refuses, and other proceedings.

Venire.

Challenge to jurors & talesmen.

And if on hearing the cause, proofs and allegations, in the absence or on the appearance of the defendant, it shall appear, that from all the circumstances, the complainant is justly entitled to the legal possession of said premises, and that notice had been given as aforesaid, the jury shall find for the complainant accordingly, and shall also assess for the complainant, against such defendant, such damages for the unjust detention of said premises, as they may deem reasonable; and said justices shall thereupon render judgment that complainant have restitution of the premises of the defendant, and for said damages and reasonable costs; and shall forthwith (if required) issue a writ of execution, directed to said sheriff, commanding him to make restitution of such premises to the complainant, either by ejecting and removing such defendant, and his goods and chattels therefrom, or otherwise, and also to levy such damages and costs, of the goods and chattels of said defendant, in like manner as other execution of *fieri facias* issued by a justice of the peace. Such execution shall be served, returned and in all respects governed as such executions of *fieri facias*, last aforesaid, except that the officer executing the same, shall in pursuance thereof, proceed to make immediate restitution of such premises as aforesaid.

Judgment & damages.

Writ of restitution and *fi. fa.*

SEC. 2. An appeal shall be granted on such judgment, to either party, under such regulations and restrictions as are required in appeals from the judgments of a justice of the peace; and in estimating the amount of the damages arising from the unjust detention of said premises, the jury or circuit court, as the case may be, shall take into consideration such detention down to the time of such finding. The appeal bond to be filed with the justices by the appellant, and sent up to the circuit court, with the other papers in the cause, shall be conditioned that he will duly prosecute his said appeal, and pay the amount of the judgment of the circuit court for damages and costs, should the same be rendered against him. Such cause in the circuit court, may be tried by a jury or by the court, at the option of either party.

Appeal.

Condition of appeal bond.

SEC. 3. If the defendant shall allege that the title to the lands, tenements or hereditaments in question, is disputed and claimed by some other person or persons, other than the complainant, whom he shall name, in virtue of a right or title accrued or happening since the commencement of the tenancy, by descent, deed or devise; and if thereupon the person so claiming shall forthwith, or upon summons immediately to be issued by said justices, returnable before them within four days next following, appear, and on oath or affirmation, to be by said justices administered, declare that he verily believes that he is entitled to

On plea of title sworn to, judgment shall not be rendered.

Bond on plea
of title.

Proviso.

In what cases
notice to quit
need not be
given.

Proviso as to
crop, &c.

the premises in dispute, and shall with one or more securities, enter into a bond to the complainant, in the sum of two hundred dollars, to be approved by said justices, conditioned that such claimant will prosecute his claim aforesaid, at the next circuit court of said county; then said justices shall forbear to render said judgment as aforesaid: *Provided*, That if default be made in the condition of said bond, such justices shall proceed, (after first notifying such claimant if he be in the said county, to shew cause, if any, to the contrary) to render judgment and issue execution as first aforesaid.

SEC. 4. Where any lands, tenements or hereditaments, have been or shall be demised or leased, for any term certain or definite, the right of possession to the same, of the tenant or tenants, his her or their representative, heirs, assigns or under-tenants, shall determine on the expiration of such lease or demise, and in such case, it shall not be necessary for the landlord, his or her heirs or assigns, to give notice to quit the premises, as herein before mentioned, to avail himself, herself or themselves of the benefits of this act; neither shall such notice to quit, be necessary in case of a tenant at will who commits waste, or of a tenant at sufferance, nor in any case, unless there exists between the parties, either expressly or constructively, the relation of landlord and tenant; but in all such cases, the landlord or landlords, his, her or their heirs, devisees or assigns, shall be entitled to the provisions of this [act] without proof of the giving of such notice: *Provided*, That nothing in this act shall be so construed as to defeat or impair the right of the tenant, to emblements and the growing crop to which he would be entitled if this act had not passed.

CHAPTER CIV.

An Act to Perpetuate Testimony.

[APPROVED, JANUARY 26, 1824.]

In what cases
testimony is
to be perpetu-
ated.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever any person shall make affidavit before any circuit court, or judge thereof, or master in chancery, that such person is a party in a suit then pending, or expects to be made a party to any suit, and that the testimony of a witness to be named in such affidavit, is material and necessary in the prosecution or defence of such suit; the court or officer before whom such affidavit is made, shall order reasonable notice to be given, to the person

named in such affidavit as party, or expected to become party, or to his attorney, that on the day and at the place in such notice to be expressed, such witness will be examined *de bene esse*, before such judge or master in chancery, as shall be specified in such order.

SEC. 2. That upon proof that such notice has been given, either by personal service, or by advertisement at least three weeks successively in some newspaper printed and published in the proper county, or one most convenient thereto, (when the person to be notified is not an inhabitant of this state,) to be made to the officer authorized to take such testimony, such officer on the day appointed in said order, or on such order day as such officer shall then appoint, proceed to take the testimony of such witness, and shall include in the deposition, any answer or declaration of such witness, which shall be required by either of the parties; and such deposition being carefully read to, and subscribed by such witness, the officer taking the same, shall certify to have been taken pursuant to this act.

Mode of proceeding.

SEC. 3. That every affidavit and order, and the deposition so taken and certified, shall within thirty days after taking such deposition, be filed in the office of the clerk of the circuit court of the county, in which the same was taken, or where the suit is pending, or where the subject matter of such expected suit may be situate; and upon proof of the death, insanity, or absence from the state, of such witness, or his inability to attend court by reason of age or infirmity, such deposition or a certified copy thereof by the clerk of the court, with whom the same may have been filed, shall be read and admitted by any court in this state, in any cause between the parties named in such affidavit aforesaid, or in any cause between persons claiming under either of said parties, and shall have like effect, as if the said witness had been personally present, and given oral testimony therein, saving the right of exception in all cases, on account of the competency of such witness, or of any part of his testimony contained in such deposition.

Testimony taken under this act when to be read.

SEC. 4. That when any person shall make affidavit as aforesaid, that he expects to be party to a suit, and that the testimony of a witness, not resident within this state, is material and necessary to the prosecution or defence thereof, and shall file the same with the clerk of any circuit court, the said clerk shall make out a commission or authority, directed to any officer authorized by law to take depositions in the state or territory, where such witness resides, authorizing such officer to take and certify the deposition of such witness, upon reasonable notice as aforesaid, and pursuant to the directions of the second section of this act; and such deposition, so taken and certified as aforesaid, authenticated

Testimony of non-resident witness, when taken.

by the certificate of the clerk, and the seal of the court of the county or district in which the officer taking such deposition resides, to be returned with the commission aforesaid, and proof by affidavit, of the service of notice of taking the same, to the court issuing such dedimus, shall be of like force and effect as aforesaid.

CHAPTER CV.

An Act providing for the Incorporation of Towns.

[APPROVED, FEBRUARY 10, 1831.]

Who may
vote.

President and
clerk of meet-
ing.

Vote for and
against incor-
porating.

Proviso.

Trustees,
when and by
whom chosen.

Term of office.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever the inhabitants of any town, wish to become incorporated, for the better regulation of their internal police, it shall be lawful for the qualified voters, who shall have resided six months therein, and pursued any trade or occupation during such time, or who shall be the owner of any freehold property in said town, to assemble themselves on the first Monday of the month of March or September, within said town; and when so assembled, they may proceed to choose a president and clerk of the meeting, both of whom shall be sworn or affirmed by any person authorized to administer an oath, faithfully to discharge the trust reposed in them, as such president and clerk.

SEC. 2. The said voters, having assembled and chosen their president and clerk as aforesaid, at the place and time aforesaid, may proceed to decide by vote *viva voce*, whether they will be incorporated or not; and the president and clerk aforesaid, shall certify under their hands and seals, after their votes are given in, the number of the votes in favour, and the number of votes against being incorporated; and if two thirds of the votes present, shall be in favour of being incorporated, the president and clerk shall make the same known to the voters, and shall deliver a certificate of the state of the polls, to the board of trustees, to be elected as hereinafter mentioned: *Provided,* That no town shall be incorporated, unless a majority of all the voters in said town shall agree thereto.

SEC. 3. Whenever the qualified voters of any town, shall have decided in the manner aforesaid, that they wish to become an incorporated body, they may on the next succeeding Monday, and annually thereafter on the same day, choose by ballot, five freeholders as trustees, who shall hold their office for the term of one year, and until other trustees are chosen and qualified: *Provided,* That it shall

be the duty of the president and clerk aforesaid, after the said town shall determine as aforesaid to become incorporated, and previous to the said first day of election for trustees, to lay off said town into five equal districts, out of each of which districts there shall be one trustee elected, by a vote of the whole town. At which first election for trustees, the president and clerk of the meeting aforesaid, to ascertain the wishes of the inhabitants of such town, shall preside; but in case of the absence of both or either of them, some suitable person shall be chosen to fill such vacancy, and at every succeeding election, the preceding board of trustees, shall direct the manner in which the same shall be conducted.

Town to be divided into 5 districts, and one trustee for each.

President and clerk shall preside at election.

Succeeding elections.

SEC. 4. Vacancies made by death, resignation or otherwise, shall be supplied by election, in manner hereinbefore directed, by the qualified electors, on a day to be appointed by the remaining trustees; and the returns shall be made in such manner as shall be directed by the trustees.

Vacancies, how filled.

SEC. 5. It shall be the duty of the trustees first elected under this act, before they proceed to make any by-laws or regulations, by virtue of their election to office, to deposit in the clerk's office of the respective county, the certificate of the president and clerk of the meeting held under the second section of this act, and as is required by said section, and also a certificate of said president and clerk, of the election of the first board of trustees, together with their names; and no act or ordinance of any such first board of trustees, shall be valid or of any force, unless the provisions of this act shall have been strictly complied with.

Certificate of election to be filed, &c.

SEC. 6. It shall be the duty of the clerks of the several counties, to make a record of such certificate as may be lodged in their offices by the board of trustees, agreeably to the provisions of this act, within three months after the same shall have been so deposited therein, under the penalty of five hundred dollars, recoverable in any court of record having jurisdiction thereof; for which services they shall be allowed the same fees, to be paid by the trustees, as for similar services.

Certificate to be recorded by C. court.

SEC. 7. The board of trustees of any town, elected agreeably to the provisions of this act, shall choose a president out of their own body; and the president and trustees aforesaid, duly elected agreeably to the provisions of this act, and their successors in office, shall thenceforth be considered in law and equity, a body corporate and politic, to have continuance forever, by the name and style of the "president and trustees of the town of —;" and by such corporate name and style, shall be forever able and capable in law and equity, to sue and be sued, plead and be im-

Trustees shall elect a president.

Style of corporation and corporate powers.

pleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, plaints, pleas, causes, matters and demands, of whatsoever kind or nature they may be, in as full and effectual a manner as any person or persons, bodies corporate and politic, may or can do.

Trustees may
make by-laws
ordinances,
&c.

SEC. 8. Whenever any town shall be incorporated agreeably to this act, the president and board of trustees, or a majority of them, shall have full power, from time to time, and at all times, to make, ordain, establish and execute, such by-laws and ordinances, in writing, not inconsistent with the laws and constitution of this state, as they shall deem necessary for the good government of such corporation; and to prevent and remove nuisances, to restrain and prohibit gambling or other disorderly conduct, to provide for licensing, regulating or restraining theatrical and other public shows and amusements within the corporation, to regulate and establish markets, to sink and keep in repair public wells, and shall have the sole and exclusive power and authority to keep in repair all necessary streets, alleys and drains, and to pass regulations necessary for the same, agreeably to the plan of said town.

Assessment &
collection of
taxes.

Poll tax.

Lister, treas-
urer & clerk.

Collection of
taxes.

Deeds and
certificates.

SEC. 9. The president and board of trustees, or a majority of them, shall have full power to assess and collect annually, taxes on all real property, not exceeding fifty cents on every hundred dollars of assessment valuation thereof; also a poll tax, on every actual citizen qualified to vote, not exceeding fifty cents each; also a reasonable tax on all other property which they may think proper subjects of taxation; also full power and authority to appoint a lister, a treasurer, a clerk, and such other officers as they find necessary, and shall allow them what they shall deem reasonable, for their services; who, when appointed, shall be governed by such rules and regulations, as shall be prescribed by said president and board of trustees; and the person or persons appointed to collect any tax imposed, by virtue of any of the powers granted by this act, shall have authority to collect the same, by distress and sale of the goods and chattels of the person chargeable with the same tax, on giving ten days' previous notice of the time and place of such sale; and if no goods and chattels, of the person chargeable with said tax, can be found, it shall be lawful to seize and sell any lot or lots, or part or parts thereof, or so much as will pay and satisfy such taxes due and in arrear, and all costs accruing on such sale, paying to the owner or owners the overplus if any; and such collector, in making such collections and sales, shall have the same powers and shall be governed by the same rules and regulations, as collectors of state and county taxes; and shall in like manner, make conveyances and certificates to the purchasers at such sale:

it shall also be his duty to make a return of all sales of lots by him made, to the clerk of the circuit court, in the same manner as collectors of state and county revenue are required to do: but in no case shall real estate, the property of minors or *femes covert*, be sold for a corporation tax by virtue of this act. And any real estate sold by virtue of this act, shall be redeemable at any time within two years, by the payment of the full amount for which the same may have been sold, with fifty per centum thereon, and also the amount of all taxes or charges subsequently accrued thereon, with legal interest on the same; and if the purchaser cannot be found conveniently, the same shall be redeemed by payment made into the corporation treasury, for the benefit of the purchaser.

Real estate of minors & *femes covert* shall not be sold. Redemption.

SEC. 10. A majority of the members of any board of trustees, shall be a quorum to transact business, but a less number may make adjournments, and shall have the power to compel the attendance of absent members, by imposing such fine on delinquents, as will ensure their attendance; and the said board of trustees shall be the judges of the election of their own members and officers, and two thirds of the members concurring, may expel any officer or member, for mal-conduct or highly disorderly behaviour.

SEC. 11. When, in the opinion of the board of trustees of any town, it would be a benefit to such town to increase the number of trustees thereof, they may order nine to be elected at their next annual election, and at every succeeding annual election thereafter.

SEC. 12. The said president and board of trustees shall have full power and authority to enforce their by-laws and ordinances in all cases whatever; but no fine, penalty or forfeiture, shall be inflicted on any one person, for a breach of any one of their by-laws or ordinances, for more than three dollars for every time he or she shall so offend; which penalties and forfeitures may be recovered before any justice of the peace in the county, by action of debt, according to law.

Penalty for violating ordinance limited.

SEC. 13. No by-law or ordinance shall be in force, until it shall have been published in at least three of the most public places in said town, for ten days, and also in some public newspaper, if any there be published in such town.

Ordinances, &c. when to be in force.

SEC. 14. All monies arising from fines, taxes, penalties and forfeitures, shall be appropriated by said president and board of trustees, towards the erecting, improving and regulating those objects, which by this act are placed under their control and jurisdiction, as likewise for defraying all such expenses as may accrue, or necessarily arise out of the exercise of the powers granted to them by this act: That the bounds of the corporation of each town, shall be

Money, how appropriated.

Bounds of corporation.

the building lots as recorded in the recorder's office of the respective counties; and when any new building lots shall be laid off adjoining any town, and the plat thereof recorded, the same shall form a part of the said corporation, entitled to the same privileges, and subject to the same rules and regulations as the organized corporation; and for the purpose of removing nuisances, the limits of the corporation shall extend one half mile in each direction, from the recorded plat of said town.

Jurisdiction
over commons, public
grounds,
streams, &c.

SEC. 15. It shall be lawful for the trustees, or other constituted authorities of any incorporated town, whether incorporated under this act or any other act of the general assembly of this state, to extend the jurisdiction thereof, over any commons or public ground belonging to said town, and the trustees of any such incorporated town, situate on a navigable stream in this state, shall have power to regulate the banks, shores and wharves in front of said town, and the same shall be deemed a part of the corporation, and within the jurisdiction of the trustees thereof: *Provided*, The owner or owners thereof shall consent thereto: *Provided, however*, That this act shall not give power to any corporation, to alter, vacate, or in any manner affect any ferries, heretofore established by law, or which hereafter may be established.

Proviso.

Incorporated
towns may
erect town
jails.

SEC. 16. The corporation of any town, whether incorporated under this or any other act, shall have power to erect a prison within their respective limits; and it shall be lawful to imprison therein, persons convicted of offences against the laws of such corporation, or of offences against the penal laws of this state; and also persons charged with offences punishable by indictment or presentment, temporarily, until they can be conveniently removed to the county jail; and the laws relating to county jails, so far as the same may be applicable, shall be the laws of the town prison aforesaid: and in all cases where the county jails are convenient, it may be lawful for the same to be used for town purposes, until a town prison shall be erected.

Fine may be
commuted by
labour, &c.

SEC. 17. That any person convicted of petty offences as aforesaid, and fined therefor, within such corporate town, if they have no goods and chattels out of which the same can be made, may commute the same by labour on the public streets of such town, at the rate of fifty cents per day, until the fine assessed be discharged; and if any such prisoner after undertaking to commute as aforesaid, shall escape, without performing the same, he may be fined for such offence, not exceeding the amount of the original fine for which he may have undertaken as aforesaid.

Town authorities may es-

SEC. 18. That it shall be lawful for the constituted authorities of any town, incorporated under this or any other

act, to establish fire companies in any such town, and give such companies such power and authority, and to govern and regulate them, by such by-laws and regulations as may be necessary; and they shall also have authority to appropriate any of their funds, to purchase and procure fire engines, hooks and ladders, buckets and all other things necessary for the extinguishment of fires in any such town, and to pass and enforce all such by-laws and regulations, as may be necessary to prevent the occurrence of fires in such town.

tablish fire
companies,
&c.

SEC. 19. It shall not be lawful for any person or persons, within the bounds of such corporation, to retail by less quantities than one quart, any spirituous liquors, foreign or domestic, or to keep what is commonly called a tippling house, unless such person or persons, shall, in addition to a license obtained from the board doing county business, obtain a license from the constituted authorities of said town, who are hereby authorized to grant the same, for any term not exceeding twelve months at one time, on the applicant paying into the treasury of the corporation, a sum at the discretion of the corporation authorities, not exceeding the sum required of such applicant by the county, for his license or permit. And any person or persons retailing, contrary to this provision, shall be punished in like manner as for retailing without license or permit from the county. And the funds arising from such licenses, shall be a permanent fund for the support of common schools in such town, under the direction of the constituted authorities of the same.

Tippling
houses in
towns re-
strained, &c.

SEC. 20. Nothing in this act shall be so construed as to prevent the qualified voters of any town, heretofore incorporated, from adopting this act of incorporation; and in case they shall do so, their former charter, so far as it may be contrary to this act, shall be void; such adoption to be made at some regular annual election, notice of the intention to take a vote on such subject being given three weeks previous to taking the same, in the same manner that by-laws are required to be published, and two thirds of the voters in such town voting for such adoption. But the powers and privileges granted by sections fifteen, sixteen, seventeen, eighteen and nineteen of this act, shall be and the same are hereby extended and conferred to all incorporated towns, as an addition to their present charters, and without any special adoption thereof by them.

Towns now
incorporated
may adopt
this act, and
how.

SEC. 21. Nothing in this act shall be so construed as to prevent any general assembly, from hereafter dissolving the corporations created under and by virtue of this act, or repealing this act or any part thereof, or from making any amendments thereto, that may be deemed expedient.

Powers ex-
tended to
towns now in-
corporated.

General as-
sembly may
dissolve cor-
porations un-
der this act.

Act incorpor-
ating Wash-
ington, Da-
viess county,
revived.

SEC. 22. That an act to incorporate the town of Wash-
ington in the county of Daviess, approved, January 15th,
1829, be and the same is hereby revived; and the qualified
voters of said town shall meet on the first Monday in
July, and annually thereafter on the first Monday in April,
and proceed to elect, by ballot, seven trustees agreeably to
the provisions of the above recited act, and to be governed
in all respects by said act.

Incorporation
of towns lega-
lized.

SEC. 23. That in all cases where the inhabitants of any
town, shall have proceeded to organize themselves into a cor-
porate capacity, and the proceedings thereof shall not have
been recorded by the clerk of the court, as prescribed by law,
or where such records may have been lost or destroyed, said
failure on the part of the clerk, or such loss or destruction
of said records, shall not in any wise vitiate the proceedings
of the trustees of said town, but the same shall be held,
deemed and considered, valid to all intents and purposes.

CHAPTER CVI.

An Act to authorize the Vacation of Towns

[APPROVED, FEBRUARY 10, 1831.]

Town not in-
corporated,
how vacated.

SEC. 1. *Be it enacted by the General Assembly of the state
of Indiana,* That whenever any person, or body corporate,
interested in any town in this state, not incorporated, or in
any town in this state which has not a corporation in ac-
tive operation, may desire to vacate any lot, street, alley,
common or any part thereof, or may desire to vacate any
public square or part thereof, in any incorporated or unin-
corporated town, it shall be lawful for such person or corpo-
ration, to petition the board doing county business for the
proper county, setting forth the particular circumstances of
the case, and giving a distinct description of the property to
be vacated, and the names of the persons to be particularly
affected thereby, which petition shall be filed with the clerk
of said board thirty days previous to the sitting thereof, and
notice of the pendency of said petition shall be given for the
same space of time, either in a public newspaper printed in
said town, or by manuscript notices thereof, set up in three
of the most public places in said town, containing a descrip-
tion of the property to be vacated.

Petition to
county board.

Notice.

County board
may vacate,
if not objected
to, and how

SEC. 2. If no opposition be made to such petition or ap-
plication, the board doing county business, may in their dis-
cretion, vacate the same, with such conditions and restric-
tions as they may deem reasonable, and for the public good:

but if opposition be made thereto, such application shall be continued until the next term of said board, at which time, if the objector shall consent to such vacation, or if the petitioner shall produce to the board the petition of two thirds of the property holders in said town, of lawful age, the said board may proceed to hear and determine upon said application, and may, if in their opinion justice require it, grant the prayer of the petitioner, in whole or in part; and the part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof, according to law, and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley, and all right and title thereto, shall vest in the person or persons owning the property on each side thereof, in equal proportion, according to the length or breadth of such lot or ground, as the same may border on such street or alley: *Provided*, That no such vacation of a street or alley, shall take place, unless the consent of the person or persons owning the property immediately adjoining to said street or alley, be obtained thereto in writing, which consent shall be acknowledged before some justice of the peace and be filed with said board.

objection
shall be tried.

Effect of va-
cation.

Proviso.

SEC. 3. That in all cases where any person interested in any incorporated town in this state, the corporate functions of which shall be in active operation, may desire to vacate any street, alley or common, or any part thereof, it shall be lawful for such person, to petition the trustees or other body, in like manner as persons interested in towns not incorporated, are authorized to petition boards doing county business, and the same proceedings shall be had thereon, before such trustees or other corporate bodies, as are authorized to be had before the boards doing county business, and such trustees or other corporate bodies may determine on such application, under the same restrictions and limitations, as are provided for in the foregoing provisions of this act.

Part of incor-
porated town
may be vacat-
ed by the trus-
tees, and how.

SEC. 4. That whenever a public square or any part thereof shall be vacated, the property thereof shall vest in the board doing county business, for the use of the proper county; and whenever any common or any part thereof in any incorporated town, shall be vacated, the same shall vest in the trustees or other corporate body, for the use of such town; and the proper authorities may sell the same and make a title to the purchaser thereof, and appropriate the proceeds thereof for the benefit of said corporation or county, as the case may be.

Public square
vacated, shall
vest in county
board.

Common va-
cated, shall
vest in the
trustees.

CHAPTER CVII.

An Act for Recording Town Plats.

[APPROVED, JANUARY 21, 1818.]

Plat to be re-
corded before
sale.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That any person or persons, his, her or their legal representatives, who may hereafter lay off any town within this state, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county, wherein the same may lie or be laid off, a correct copy of the plat of said town, with the public ground, (if any there be,) streets, lanes, and alleys, with their respective widths properly marked, and the lots, regularly numbered in numerical order, and the size of the lots marked by reference to the plat of said town.

Donations
noted on re-
cord.

SEC. 2. Every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on the plat of the town, wherein such donation or grant may have been made, shall be considered to all intents and purposes, as a general warranty to the said donee or donees, grantee or grantees, for his, her, or their use, for the purposes intended by the donor or donors, grantor or grantors aforesaid.

SEC. 3. Every person or persons, hereafter laying off any lots in addition to any town in this state, shall previous to the sale of such lots, have the same recorded under the same regulations, as are provided for recording the original plat of said town, which shall be considered as an addition thereto.

Acknowledg-
ment.

SEC. 4. Every person or persons, whose duty it may be to comply with the foregoing requisitions, shall, at or before the time of offering such plat or other paper or papers for record, acknowledge the same before the recorder of the proper county, or some justice of the peace thereof, a certificate of which acknowledgment shall be (by the officer taking the same) endorsed on the back of such plat or other paper, and recorded therewith, and form a part of said record.

Forfeiture.

SEC. 5. Every person or persons, who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions of this act, shall forfeit and pay for the use of said town, for every month that he or they may delay a compliance with the provisions aforesaid, the sum of one hundred dollars, to be recovered by action of debt, qui tam, or otherwise, in the name of the treasurer of the county: *Provided*. That where any town plat heretofore recorded, does not fully and clearly set out and describe the size of the lots, streets, alleys and courses of the

lines of said town, and where donations have been given or intended to have been given, either to the public or to individuals, or to any religious society or societies, and the same hath been neglected to have been inserted on said plat, the proprietors of such town, or either of them, is or are hereby empowered and required, to make out such other description as will more fully and clearly explain their true intentions; which shall be acknowledged, certified, and recorded, in the same manner town plats are to be acknowledged, certified and recorded as required in this act. Subsequent description, &c.

All laws and parts of laws, relative to the recording of town plats, are hereby repealed.

This act to take effect from and after its publication.

CHAPTER CVIII.

An Act concerning Vagrants.

[APPROVED, JANUARY 22, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every person who shall be suspected to get his livelihood by gaming, and every able bodied person, who is found loitering and wandering about and not having wherewithal to maintain himself by some visible property, and who doth not betake himself to labour or some honest calling to procure a livelihood, and all persons who quit their habitation and leave their wives and children without suitable means of subsistence, whereby they suffer or may become chargeable to the county, and all other idle, vagrant, dissolute persons, rambling about without any visible means of subsistence, shall be deemed and considered as vagrants. Who shall be deemed vagrants.

SEC. 2. When any such person is found in any county, any justice of the peace shall, from information, or from his own knowledge, issue his warrant to the sheriff or constable, to bring such person before him, and if upon examination, it shall appear to such justice, that he comes within the description of vagrants, agreeably to this act, he shall commit him to the jail of the county until the next circuit court, unless he enter into bond, payable to the county treasurer in the sum of fifty dollars, with sufficient security or securities, to be adjudged of by the justice, for his appearance before the said court, and to abide the determination thereof. If upon examination it appears to the said court, that such person is within the description of vagrants, and is a minor, they shall direct the sheriff to bind him to some person of Justice may commit such person to jail.

Court may bind out such person.

Proviso.

Money arising from hire, &c. how appropriated.

J. P. shall see this act enforced.

useful trade or occupation, until he shall arrive to the age of twenty-one years, and if such apprentices desert their masters, they shall be dealt with as other apprentices who leave their masters before the expiration of their apprenticeship. But if such vagrant be above the age of twenty-one years, the said court shall direct the sheriff to hire him out for any term not exceeding nine months: *Provided however*, That if such person have a wife or family within the state, he shall be set at liberty, upon his entering into bond, with approved security, payable to the county treasurer, to return to his wife and family, and follow some useful employment for their maintenance and support.

SEC. 3. The money arising from the hire of any vagrant, shall be applied by the court towards the payment of his debts; but if he shall not be indebted or owe to the amount of his hire, the same or the balance thereof shall be paid to such vagrants, at the time his or their service expires, unless he shall have a wife or children, in which case it shall be applied to their use. When any vagrant shall have entered into bond and security as last mentioned, to the county treasurer, and the penalty thereof shall become forfeited, the court shall direct an execution to issue thereupon; having first given ten days notice to the party or parties by scire facias, that such execution will issue if no cause be shewn why the same ought not to issue against the goods and chattels, lands and tenements of such security, the sheriff shall make distress and collect the amount, as on other executions, and the money arising therefrom shall be applied towards lessening the county levy.

SEC. 4. All the justices within their respective townships, shall see that this act is executed, and all sheriffs and constables within the several counties, shall give information to such justices, of all vagrants that may be within their knowledge in their respective townships; and grand jurors empanelled for any county, shall make presentment of all such persons within the county as they may suspect to be vagrants, agreeably to this act; and upon such presentment the court shall direct some justice of the peace, to issue his warrant to bring such suspected person before him, and if upon examination it appears that they come within the description of vagrants, the same steps shall be taken against them as are heretofore directed to be taken against vagrants.

SEC. 5. All laws and parts of laws, heretofore in force respecting vagrants, shall be, and the same are hereby repealed.

This act to be in force from and after its publication.

CHAPTER CIX.

An Act prescribing the mode of Changing the Venue.

[APPROVED, JANUARY 23, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That in all civil suits at common law and in chancery, cognizable in any of the circuit courts of this state, now pending or which may hereafter be pending, when either of the parties shall conceive, that he, she or they, will not receive a fair trial in the circuit court, where such suit is pending, owing to the presiding judge having been engaged as counsel in the cause, prior to his appointment as judge, or that one or both the associate judges of the court in which the suit is pending, is or are of kin to either of the parties, in any of the following degrees, to-wit: As father, son, brother, uncle, first cousin, or brother-in-law, or where one or both of the associate judges are interested, and the presiding judge may be of kin to one of the parties, in the manner aforesaid, or to the undue influence of his or their adversary or adversaries, or to the odium which attends the said party, or attaches to his, her, or their legal cause of action or defence, or to local prejudices, it shall and may be lawful for the party, so suspecting that he, she, or they will not receive a fair and impartial trial in the court, then sustaining said suit, owing to the said causes or any of them, at any time to petition a president of the circuit, or the associate judges of the county where the suit is pending, for a change of venue; which said petition shall distinctly set forth the cause or causes, why such suspicion is entertained, and be supported by affidavit of the petitioner or petitioners, or some one of them; which being done, it shall and may be lawful for the judge or judges aforesaid, on the receipt of said petition, under his hand or their hands, to award a change of venue, and order the clerk of the court before whom the suit is then pending, to send forward the papers in said suit, by some meet person employed by such clerk, to such court having jurisdiction in similar cases, as the said judge or judges may direct; and the clerk thereof shall receive such papers, giving a receipt therefor, and docketing the said suit in order with other causes; and the court to which such papers are sent, shall be and is hereby vested with full power, authority and jurisdiction, to award subpoenas for witnesses, to enforce their attendance, to grant commissions for taking depositions, to hear and determine said controversy, to award executions, and do all matters and things relative thereto, which the said court, from which the said cause was removed, might or could legally have done.

Venue may be changed, and for what cause

Proceedings.

Papers to be forwarded by clerk.

SEC. 2. That the expenses attending the removal, shall

Expenses of removal.

be paid by the person praying the same, and the person who shall be entrusted to convey said papers to the clerk of the circuit court, to which they shall be sent, shall and may receive the sum of eight cents, for each mile he must necessarily travel in going to and returning from said clerk's office, which sum shall be paid into the hands of the clerk of the court, where the papers originated, before they shall be delivered out of his office.

Clerk, how far accountable for the papers.

SEC. 3. That the clerk of the court in which the said suit originated, shall be answerable for the fidelity of the person he may employ to convey said papers from his office, to the office of the clerk of the court, to which they may be sent, but shall not be answerable for accidents, not arising from neglect.

Judges' order to be preserved by the cl'k.

SEC. 4. That the venue in no case shall be changed, unless the party who prays the same shall deposite the order of the judge or judges removing the same, together with the petition aforesaid, which shall be carefully preserved by the clerk, and also the necessary expenses attending the removal, with the clerk having custody of the papers, at least thirty days before the court, to which the said suit shall be set for trial.

No change to the county where either party resides.

SEC. 5. No change of venue shall be granted, so as to have the cause sent to either of the counties, where the parties may reside, nor shall there be more than one removal of the same cause.

No change to a different circuit, unless the president be interested.

SEC. 6. No change of venue shall be granted, so as to take the cause out of the circuit, where the suit is commenced, unless the president of the circuit be interested or prejudiced, nor until the party applying for such change, shall produce to the judge, to whom such application is made, sufficient proof that the opposite party has had ten days previous notice in writing, of the time and place such application is intended to be made, or in case of absence out of the county or state, to his, her or their agent or attorney in fact, or attorney at law, which notice shall be certified by the judge granting such change, to the clerk where the suit was commenced.

Notice.

Petitioner failing, to pay \$5 to opposite party.

SEC. 7. If any person wishing to obtain a change of venue, shall have given notice to the opposite party, as is provided by this act, and shall fail to attend on the day and at the place appointed, or shall attend and shall not make out sufficient cause as aforesaid, he shall pay to the opposite party five dollars for his false clamour, to be taxed by the clerk and collected as other costs; and in order the better to carry this section into effect, the judge or judges before whom the application is made for a change of venue, shall file the petition and other papers in the clerk's office, with his decision thereon.

CHAPTER CX.

An Act regulating Weights and Measures.

[APPROVED, JANUARY 21, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the several boards of county commissioners within this state, be, and they are hereby authorized and required to procure for their respective counties, and at the expense of the same, a set of the following measures and weights, for the use of their county, that is, one measure of one foot or twelve inches, English measure, so called; also, one measure of three feet or thirty six inches, as aforesaid; also, one half bushel measure for dry measure, which shall contain one thousand and seventy five and one fifth solid inches; also, one gallon measure, which shall contain two hundred and thirty-one solid inches; which measures are to be of wood or any metal the court may think proper; also, one set of weights commonly called Avoirdupois weight, and sealed with the name or initial letters of the county inscribed thereon; which weights and measures shall be kept by the clerk of the circuit court of each and every county in this state, for the purpose of trying and sealing the weights and measures used in their counties.

County commissioners to procure measures and weights.

To be kept by the clerk of circuit court.

SEC. 2. As soon as the several boards of county commissioners shall have furnished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door for one month; and any person who shall thereafter buy or sell any commodity whatsoever, by measures or weights, that shall not correspond with the county weights and measures, shall for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars, for the use of the county seminary where such offence shall have been committed, and also the costs, to be recovered before any justice of the peace for said county. Every person or persons desirous of having his, her or their weights and measures, tried by the county standard, shall apply to the clerk of the circuit court of the county in which he shall live, and if they correspond with the county standard, the clerk shall seal them with the seal provided for that purpose.

When procured, notice to be given.

Persons selling by other weights and measures, punishable.

Clerk to seal weights, &c.

CHAPTER CXI.

An Act to encourage the Killing of Wolves.

[APPROVED, FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That every person who shall take and kill any wolf or wolves within this state, (prairie wolves excepted) and within eight miles of any of the settlements thereof,

Bounty, and
how obtained.

Oath required
of killer.

Proviso.

Clerk shall
destroy the
ears & grant
certificate.

Clerk's fee.

C'ty boards
may allow
bounty.

Liability for
keeping a dog
which kills
sheep.

Repeal.

shall receive the following bounty, to wit: for each wolf supposed to be six months old and upwards, one dollar; and for each wolf under six months old, fifty cents; to be paid out of the state treasury on the certificate of the clerk of the circuit court in the county where such wolf was killed or taken; and the person claiming such reward, shall produce the scalp or scalps with the ears, within thirty days after such wolf or wolves has or have been killed, to the clerk of the circuit court in the county where such wolf was killed or taken, who shall administer to said person the following oath or affirmation, viz: "You A. B. do solemnly swear, or affirm, (as the case may be) that the scalp or scalps produced, were taken from a wolf or wolves killed by you within this county, and within eight miles of some one of the settlements thereof, and within thirty days past; and that you believe such wolf or wolves, from which they were taken, were under or over six months old, (as the case may be) and that you have not spared the life of any wolf or wolves, in your power to kill, with the design to increase the breed thereof:" *Provided*, That if the premium on wolf scalps, exceeds the amount of the state revenue of any county, the excess shall be paid out of the county revenue.

SEC. 2. The clerk before whom such oath or affirmation shall be taken, shall cause the ears on all such scalps, to be destroyed in his presence, and shall give to the person making the same, a certificate of the number of scalps produced, and the sum to which such person is entitled, with his name, and place of residence.

SEC. 3. The clerks of the proper counties shall be entitled to the sum of twelve and a half cents, for making each and every certificate, as above provided, to be paid by the person applying for such certificate.

SEC. 4. The board doing county business in any of the counties in this state, may allow to the holder of any such certificate, an additional allowance, not exceeding two dollars for a grown wolf, and one dollar for each under six months old, to be paid out of the county treasury, out of any monies therein not otherwise appropriated.

SEC. 5. That if any dogs shall kill or injure any sheep hereafter, the owner of any sheep so killed or injured, shall be entitled to recover of the owner of the dog, the value of the sheep so killed or injured, any law, usage or custom to the contrary notwithstanding: *Provided*, That the owner of such dog, shall not be so liable, if he will kill his dog on the first offence.

SEC. 6. So much of any act or acts as comes within the purview of this act, be and the same is hereby repealed.

This act to take effect and be in force from and after its passage.

SECRETARY'S OFFICE.

INDIANA, to wit:

I, JAMES MORRISON, Secretary of State of the State aforesaid, certify that I have compared the foregoing acts and joint resolutions, as printed, with the enrolled acts on file in my office, and find them correctly printed, with the exception of the words included in brackets, thus []; which are either taken from the engrossed bill, or interpolated to aid the sense.

Done at Indianapolis, the twenty-fourth day of May, in the year of our Lord, one thousand eight hundred and thirty one, the fifty fifth year of the independence of the United States, and of the State, the fifteenth year.

JAMES MORRISON.



EXPLANATIONS

OF

TECHNICAL TERMS AND PHRASES

USED IN THE LAWS.

PREPARED BY THE SECRETARY OF STATE, IN OBEEDIENCE TO A JOINT RESOLUTION
OF THE GENERAL ASSEMBLY.

- Administrator de bonis non.* Administrator of the goods not administered by a deceased executor or administrator.
- Ad quod damnum.* To what damage; a writ to assess damages for obstructing water courses, &c.
- Alias.* Otherwise; a second writ when the first is not served.
- Bona fide.* With good faith.
- Capias ad respondendum, (capias).* A writ commanding that the body of the defendant be taken to answer to the action.
- Capias ad satisfaciendum, (ca. sa.)* A writ commanding that the body of the defendant be taken in execution, to satisfy the judgment.
- Cepi corpus.* A return to a capias writ that the body is taken.
- Certiorari.* A writ to an inferior court, commanding that the proceedings in a cause be certified to a superior court.
- Cestui que trust.* He for whom the trust is; the person for whose benefit a trustee holds an estate.
- Choses in action.* Things in action, as bonds, notes, &c.
- De bene esse.* Conditionally.
- De novo.* Anew. *A venire de novo* is awarded when a new trial is granted after a verdict.
- Dedimus potestatem.* A commission usually sent by a court to some individual or judicial officer, authorizing him to take and transmit testimony.
- Demur.* } Is an issue of law to be tried
Demurret. } by the court.
- Distress infinite.* A writ commanding the property of a person to be distrained until he shall appear in court and file special bail.
- Emblements.* The profits of lands which have been sowed.
- Estate per autre vie.* The interest which one has in lands during the life of another.
- Exoneretur.* A discharge of special bail, entered after the surrender of the principal.
- Ex post facto.* After the act.
- Ex parte.* On the part of one only.
- Ex officio.* By virtue of the office.
- Feme covert.* A married woman.
- Feme sole.* An unmarried woman.
- Fieri facias.* A writ of execution commanding that the judgment be made of the estate of the defendant.
- Garnishee.* The party in whose hands another's money is attached.
- Guardian ad litem.* Guardian during suit.
- Habeas corpus.* A writ commanding that a person in custody, be brought before a court or judge, for the purpose of investigating the legality of the imprisonment, &c.
- Habere facias possessionem.* A writ commanding that the sheriff give possession of lands, to him who has recovered in ejectment or disseisin.
- Instantly.* Immediately.
- Jury de meietate lingua.* A jury composed of one half foreigners.
- Levari facias.* A writ of execution by which land is ordered to be levied.
- Livery of seizin.* A delivery of possession of lands.
- Mandamus.* * A writ issuing from a superior court, to some officer, corporation or tribunal, commanding some official act to be done.
- Mal-feasance.* A corrupt performance of some official duty.
- Mesne process.* Intermediate process; the writ by which the defendant is brought into court.
- Minimum price.* Smallest price.
- Misfeasance.* An improper performance of some official duty.
- Moiety.* One half.
- Non est.* A writ to restrain an individual from departing the state.
- Nihil.* A return upon a scire facias, where it is not executed.
- Nihil dicit.* } The name of a judgment where
Nil dicit. } no defence is pleaded.
- Nihil debet.* } The plea of general issue to
Nil debet } an action of debt.

Non compos mentis. Not of sane mind.
Non sum informatus. An answer by an attorney, when he has nothing more to say for his client.
Non est inventus. A return to a writ of capias, where the defendant is not found.
Non est factum. A plea denying the execution of a deed or specialty sued on.
Non assumpsit. The plea of general issue in an action of assumpsit.
Nonfeasance. Non performance of an official act.
Nuncupative will. A will made before witnesses, declared by word of mouth, only.
Nolle prosequi. Is entered by the prosecuting attorney, when he dismisses or will not further prosecute an indictment.
Oyer. To hear. To crave oyer, is to demand the reading of the bond or other writing sued on.
Parol evidence. Evidence by word of mouth.
Prima facie. On the first appearance. Prima facie evidence, is that which is sufficient, until obviated by evidence from the opposite party.
Posse comitatus. Power of the county.
Plene administravit. A plea by an administrator that he has fully administered.
Quarries. Often times; a third writ issued, where a first and second have not been executed.
Pro confesso. For confessed.
Profert. A party makes *profert*, when he brings into court the written instrument upon which he relies in his pleadings.
Qui tam. The name of an action in which the plaintiff sues as well for himself as for the state or public, and in which he is entitled to a part of the judgment recovered.
Quo warranto. A writ requiring the person or body corporate to whom it is directed, to shew cause why he or they claim to perform a particular function.
Quare clausum fregit. The name of an action of trespass to real property, or for

breaking & entering the plaintiff's close.
Quietus. Acquittance.
Subpœna. The name of a writ, generally applicable to summoning witnesses.
Supersedeas. A writ to stay proceedings until the appellate or supreme court shall reverse or affirm the judgment of the inferior court.
Scire facias. The name of a writ requiring the defendant to show cause why execution should not issue upon a judgment or recognizance.
Scire feci. The return to a writ of scire facias, when it is served.
Talesmen. Such men as are not regular jurors, taken from the by-standers to complete the regular panel.
Tenancy by courtesy. Is he who marries a woman possessed of lands in fee-simple, and has by her a child which comes alive into the world. By virtue whereof he has a life estate in the lands.
Tenant in dower. Is a woman possessing lands which were the property of her deceased husband, and to which she is entitled during her life.
Terre tenant. Tenant of the lands.
Testatum fi. fa. or ca. sa. Is a writ issued to another county, in which writ it is testified or suggested that the defendant is not found, or has no property in the first county.
Tort. Wrong.
Venire facias. A writ commanding the proper officer to summon a jury.
Venue. Vicinage; neighbourhood. The county or township, in which the action is laid.
Vi et armis. With force and arms. This phrase is applicable to actions of trespass.
Viva voce. With the living voice. By word of mouth.
Venditioni exponas. A writ commanding the officer to offer for sale, property previously levied, by virtue of a former execution.

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¹⁰⁰
^{or}
Charles Lewis Jun
^{4/2}
Departed this life
Saturday June the 4th
AD 1859⁴ Was Buried
the next day —

May the 2 day 1864 it
rained & snowed heavily —
the 10 & 11 Rane & snow —
Friday the first day of Sep
1865 Charles Lewis de
- parted this life and was
Buried on Saturday —

